

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Fairmont, owner of Fairmont Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Fairmont has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Fairmont has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the City of Fairmont to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the City of Fairmont's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Matthew York, Director of Public Works/Utilities, has been delegated as the DBE Liaison Officer. In that capacity, Director of Public Works/Utilities 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 City of Fairmont in its financial assistance agreements with the Department of Transportation.

The City of Fairmont has disseminated this policy statement to the Airport Advisory Board and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the City of Fairmont's DOT-assisted contracts. The distribution was accomplished by posting on the official city website and advertising in the local newspaper, the Fairmont Sentinel.

Lee C. Barts, Mayor

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The City of Fairmont is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City of Fairmont will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

The City of Fairmont 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 City of Fairmont 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.

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

The City of Fairmont will provide data about its DBE Program to the Department as directed by DOT and its operating administrations.

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

The City of Fairmont will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. The City of Fairmont will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

Bidders List

The City of Fairmont will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT.

The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

The City of Fairmont will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

The City of Fairmont will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

The City of Fairmont will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the City of Fairmont will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The City of Fairmont will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City of Fairmont will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the City of Fairmont financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

The City of Fairmont has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the City of Fairmont signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The City of Fairmont 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 City of Fairmont 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 City of Fairmont 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 City of Fairmont of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: The City of Fairmont will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Fairmont is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

The City of Fairmont is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City of Fairmont is in compliance with it and Part 26. The City of Fairmont will continue to carry out this program until all funds from DOT financial assistance have been expended. The City of Fairmont does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the City of Fairmont:

Matthew York, Director of Public Works/Utilities
100 Downtown Plaza, Fairmont, MN 56031
507-238-3942 myork@fairmont.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Fairmont complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Airport Advisory Board concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Works with all departments to set overall annual goals.
3. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
4. Analyzes City of Fairmont's progress toward attainment and identifies ways to improve progress.
5. Advises the governing body on DBE matters and achievement.
6. Chairs the DBE Advisory Committee.
7. Plans and participates in DBE training seminars.
8. Acts as liaison to the Uniform Certification Process in Minnesota.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Fairmont 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. Availability of such institutions will be investigated on an annual basis.

There are no such Institutions listed in the MnDOT DBE database at this time for the **City of Fairmont**.

The following Minnesota **Minority Depository Institutions (MDIs)** were found on the Federal Deposit Insurance Corporation (FDIC) website:

WOODLANDS NATIONAL BANK, HINCKLEY, MN
LAKE COUNTRY COMMUNITY BANK, MORRISTOWN, MN

The **WomenVenture** organization, operating out of St Paul, MN, has provided women of all ages, cultures, races, and income levels with the tools and resources to achieve economic success through small business ownership. Their website can be found at www.womenventure.org.

Women’s Business Centers, partnering through the U.S. Small Business Administration, ensure that critical resources are available to all women entrepreneurs, and specifically those who are economically or socially disadvantaged. WBCs are approved to offer SBA loan products under SBA’s Microloan Program.

Section 26.29 Prompt Payment Mechanisms

The City of Fairmont requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the City of Fairmont established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor’s receipt of each payment from the City of Fairmont.

The City of Fairmont ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, the City of Fairmont has selected the following method to comply with this requirement:

The City of Fairmont will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 10 days after the City of Fairmont payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, the City of Fairmont includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 10 days, any reference to “10 days” will be revised accordingly.

To implement this measure, the Sponsor includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

- a. From the total of the amount determined to be payable on a partial payment, 10% percent of such total amount will be deducted and retained by the Owner for protection of the Owner’s interests.

Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner.

When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Prompt Payment Monitoring for DBEs and Non-DBEs

The City of Fairmont clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the City of Fairmont undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

The City of Fairmont requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City of Fairmont financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City of Fairmont or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The **City of Fairmont** reviews submittals of records of payments made to subcontractors from prime contractors. The **City of Fairmont** proactively reviews contract payments to subcontractors including DBEs on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City of Fairmont by the prime contractor.

Prompt Payment Dispute Resolution

The City of Fairmont will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

The City of Fairmont has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR)

- The City of Fairmont and complaining prime contractor or subcontractor agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to prompt payment and return of retainage, or the breach thereof ("Disputes") to mediation. The City of Fairmont and complaining prime contractor or subcontractor agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, the parties may seek to have the Dispute resolved through any legal proceeding or litigation, which shall solely be brought solely in Martin County District Court for the Fifth Judicial District, Martin County, Minnesota. The parties hereby consent and agree that the Martin County District Court for the Fifth Judicial District, Martin County, Minnesota, and said court shall have the sole and exclusive jurisdiction over any such proceeding unless said court lacks federal subject matter jurisdiction. If the Martin County District Court for the Fifth Judicial District, Martin County, Minnesota lacks federal subject matter jurisdiction then the United States District Court for the District of Minnesota shall have the sole and exclusive jurisdiction over any such proceeding. The parties hereby waive any objection to jurisdiction or venue, and any defense claiming lack of jurisdiction or improper venue.

The following provisions shall apply to the mediation process:

- The parties agree to select a mediator from the Roster of Alternative Dispute Resolution (ADR)/Mediation Neutrals on file:
<https://www.mncourts.gov/Help-Topics/AlternativeDisputeResolution.aspx>
- The parties agree to split mediation costs evenly.

- The parties agree that any mediator selected shall agree to be bound by the Code of Mediation Ethics promulgated by the Minnesota Supreme Court.
- The parties agree that mediation shall take place in Fairmont, Minnesota unless otherwise agreed upon, in writing, by the Parties.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- The City of Fairmont shall withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the contractor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City of Fairmont to resolve prompt payment disputes, affected subcontractor may contact the responsible **FAA** contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The City of Fairmont provides appropriate means to enforce the requirements of § 26.29. These means include:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Minnesota Statutes.

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001

The City of Fairmont will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The City of Fairmont is a non-certifying member of the Minnesota Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

The MnDOT Directory may be found on the Internet at

<https://mnucp.metc.state.mn.us/> and in Attachment 4 to this program document.

Section 26.33 Over-concentration

The City of Fairmont has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development and Mentor-Protégé Programs

The City of Fairmont has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

The City of Fairmont implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, and describes and sets forth these mechanisms in this DBE program.

The City of Fairmont actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by collecting quarterly records of payments to subcontractors made by prime contractors. This mechanism to maintain a running tally of overall goal attainment will be used to inform the City of Fairmont decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

The City of Fairmont actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by comparing the prime contractor records of payments made to subcontractors in relation to work awarded on subcontracts. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

The City of Fairmont reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by **the Consultant**. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by **the Consultant**. The City of Fairmont will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. The City of Fairmont will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

The City of Fairmont has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment **10** to this DBE Program. The program elements will be actively implemented to foster small business participation. The City of Fairmont acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Fairmont does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City of Fairmont will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the City of Fairmont will submit its Overall Three-year DBE Goal to **FAA** by August 1st of the year in which the goal is due, as required by the schedule established by **FAA**

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of Fairmont does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City of Fairmont will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City of Fairmont will use **DBE Directory information and Census Bureau data** as a method to determine the base figure. The City of Fairmont understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts.

The City of Fairmont will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the City of Fairmont market.

In establishing the overall goal, the City of Fairmont will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the City of Fairmont to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City of Fairmont is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f).

The goal submission will document the consultation process in which the City of Fairmont engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City of Fairmont will publish a notice announcing the proposed overall goal before submission to the **FAA** on August 1st. The notice will be posted on the **City of Fairmont's** official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by **FAA** the revised goal will be posted on the City of Fairmont official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the City of Fairmont. This notice will provide that the City of Fairmont will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) and the location(s) where the proposed goal may be reviewed.

The Overall Three-Year DBE Goal submission to **FAA** will include any information and comments received, who provided the comment, and how the City of Fairmont considered and responded to any comments and information received before finalizing the goal.

The City of Fairmont will begin using the overall goal on October 1 of the relevant period, unless other instructions from **FAA** have been received.

Project Goals

If permitted or required by the **FAA**, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

Prior Operating Administration Concurrence

The City of Fairmont understands that prior **FAA** concurrence with the overall goal is not required. However, if the **FAA** review suggests that the overall goal has not been correctly calculated or that the method employed by **FAA** for calculating goals is inadequate, **FAA** may, after consulting with the City of Fairmont, adjust the overall goal or require that the goal be adjusted by the City of Fairmont. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment **5** to this program.

Section 26.47 Failure to meet overall goals

The City of Fairmont cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the City of Fairmont fails to administer its DBE program in good faith.

The City of Fairmont understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The City of Fairmont understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The City of Fairmont will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City of Fairmont will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment **5** to this program.

The City of Fairmont will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order to meet the overall goal. Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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 type of work).

Contract goals will be expressed as a percentage of Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as **Responsible**.

The City of Fairmont will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder

when a non-DBE subcontractor was selected over a DBE for work on the contract;

- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City of Fairmont. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor, the City of Fairmont will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue.

The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the City of Fairmont will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which the City of Fairmont solicits proposals to design and build a project with minimal project details at time of letting, the City of Fairmont may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the City of Fairmont will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The City of Fairmont and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

The City of Fairmont will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the City of Fairmont **will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within **5** days of being informed by the City of Fairmont that it is **not responsible** because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Cara Brown, City Attorney
Chris Hood, City Attorney
Flaherty & Hood, P.A.
525 Park Street, Suite 470 St. Paul, MN 55103
651-225-8840 cebrown@flaherty-hood.com and cmhood@flaherty-hood.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 the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent 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 Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

The City of Fairmont will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the City of Fairmont deems appropriate if the prime contractor fails to comply with the requirements of this section.

The City of Fairmont will require the awarded contractor to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

The City of Fairmont will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless the City of Fairmont causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient.

This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The City of Fairmont will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the City of Fairmont's written consent as provided in § 26.53(f); and
- (2) Unless the City of Fairmont's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City of Fairmont may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- (6) The City of Fairmont has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to the City of Fairmont written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- (10) Other documented good cause that the City of Fairmont determines compels the termination of the DBE subcontractor;

Before transmitting to the City of Fairmont the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City of Fairmont sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising the City of Fairmont and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the City of Fairmont should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the City of Fairmont may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If the City of Fairmont requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. The City of Fairmont shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in § 26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in § 26.87(j).

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Fairmont is a **non-certifying member** of the **Minnesota** Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. Minnesota UCP will use the certification standards of Subpart D 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. Certifying **Minnesota** UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Minnesota Department of Transportation

Contact Person: LaTanya Lombardi

395 John Ireland Blvd. M.S. 170

St. Paul, MN 55155

(612)-297-5130

CivilRightsCertificationSubmissions.DOT@state.mn.us

<https://mnucep.org/Apply-for-Certification.aspx>

<https://www.dot.state.mn.us/civilrights/>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Minnesota UCP agreement. The full UCP agreement can be found at: The full UCP agreement can be found at: <https://mnucep.org/media/0n3lpqxc/mnucep-program-document.pdf>

Section 26.81 Unified Certification Programs

The City of Fairmont is a Non-Certifying Member of a Unified Certification Program (UCP) administered by **Minnesota Unified Certification Program**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

City of Fairmont is a Non-Certifying Member of a Unified Certification Program (UCP) administered by:

- City of Minneapolis
- Metropolitan Airports Commission
- Metropolitan Council
- Minnesota Department of Transportation

The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.91 Actions Following DOT Certification Appeal Decisions

If the City of Fairmont is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City of Fairmont

The **City of Fairmont** understands that if it fails to comply with any requirement of this part, the **City of Fairmont** may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

The **City of Fairmont** understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that the City of Fairmont is in noncompliance with part 26, the appropriate DOT office will promptly send the City of Fairmont, return receipt requested, a written notice advising that there is reasonable cause to find the City of Fairmont in noncompliance. The notice states the reasons for this finding and directs the City of Fairmont to reply within 30 days concerning whether you wish to begin conciliation.
- (4) **Conciliation.**
 - a. If the **City of Fairmont** requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

- b. If the **City of Fairmont** and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and the **City of Fairmont** is regarded as complying. The conciliation agreement sets forth the measures the City of Fairmont has taken or will take to ensure compliance. While a conciliation agreement is in effect, the **City of Fairmont** remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If the **City of Fairmont** fail to carry out the terms of a conciliation agreement, the **City of Fairmont** is in noncompliance.
- d. If the **City of Fairmont** does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

(5) Enforcement actions.

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The **City of Fairmont**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The **City of Fairmont** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2

ORGANIZATIONAL CHART



ATTACHMENT 3

DBE Form B

List of Businesses That Submitted Quotes

Submit a completed copy of this form with the bid proposal.

Owner	
Project Name	
Contractor	Phone
AIP No.	Bid Opening Date

Prime Bidder Name of Business	Contact Person	Telephone Number
Mailing or Email Address		Type of Work
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No
NAICS Code(s) for work quoted (https://www.census.gov/naics/)		
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Gender of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

List all firms that submitted quotes from all tiers of subcontracting.

Copies of all DBE and non-DBE quotes must be retained for 60 days after the bid opening date, or until the project is awarded, and be provided upon request of the Engineer.

Name of Business	Contact Person	Telephone Number
Mailing or Email Address		Type of Work
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No
NAICS Code(s) for work quoted (https://www.census.gov/naics/)		
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Gender of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Gender of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Gender of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Name of Business		Contact Person	Telephone Number
Mailing or Email Address		Type of Work	
DBE <input type="checkbox"/> Yes <input type="checkbox"/> No		Will be used on the job <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAICS Code(s) for work quoted (https://www.census.gov/naics/)			
Age of Bidder <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	Race/Gender of Majority Owner <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-Minority Woman <input type="checkbox"/> Other	Annual Gross Receipts <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million	

Use additional pages, following the same format, if necessary.

ATTACHMENT 4

The **Minnesota** UCP Directory may be found here:

<https://mnu cp.metc.state.mn.us/>

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Fairmont, Fairmont Municipal Airport

Goal Period: *FFY-2024-2026 October 1, 2023 through September 30, 2026*

DOT-assisted contract amount:	FY-2024	\$ <u>474,000</u>
	FY-2025	\$ <u>812,004</u>
	FY-2026	\$ <u>250,000</u>
	Total	\$ <u>1,536,004</u>

Overall Three-Year Goal: 2.7%, to be accomplished through 2.7% RC and 0% RN

Total dollar amount to be expended on DBEs: \$41,472

Describe the Number and Type of Contracts that the airport anticipates awarding

Contracts Fiscal Year #1-2024

1. Taxiway Edge Light & Sign System Replacement and Non-Standard Turnaround Removal - Administration, Environmental, Design, Bidding, and Project Closeout Services - \$76,000
2. Airport Layout Plan/Master Plan Update with AGIS - \$398,000

Contracts Fiscal Year #2-2025

1. Taxiway Edge Light & Sign System Replacement and Non-Standard Turnaround Removal Construction CA/CO, Survey, Closeout, and Materials Testing Services - \$812,004

Contracts Fiscal Year #3-2026

1. Rehabilitate Taxiway E (Mill & Overlay) - \$250,000

Market Area: The market area must be identified as the area in which the substantial majority of the Airport's contractors and subcontractors that seek to do business with the Airport are located and the area in which the Airport spends the substantial majority of its contracting dollars. For the type of work proposed, this market area consists of surrounding counties in Minnesota, South Dakota and Iowa within about a 120-mile radius of the within Fairmont Municipal Airport.

Step 1. Relative Availability of DBEs

The step 1 figure for the relative availability was calculated as follows:

Method: Use DBE Directories <https://mnucp.metc.state.mn.us/>
<https://dot.sd.gov/doing-business/contractors/dbe>
<https://secure.iowadot.gov/DBE/Home/Index/>

and Census Bureau Data from <https://data.census.gov/cedsci/>

Unweighted Availability of DBE Firms:

Fiscal Year 2024			
NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (general)	4	185
541370	Survey and Mapping (except geophysical) services	2	10
Total		6	195

Fiscal Year 2025			
NAICS	Type of Work	Total DBEs	Total All Firms
541330	Engineering (general)	4	185
541370	Survey and Mapping (except geophysical) Services	2	10
561990	All Other Support Services	2	92
238210	Electrical	2	692
561730	Landscaping Services	13	896
238910	Site Preparation	12	420
237310	Highway, Street and Bridge Construction	12	103
Total		47	2,398

Fiscal Year 2026			
NAICS	Type of Work	Total DBEs	Total All Firms
237310	Highway, Street and Bridge Construction	12	103
561990	All Other Support Services	2	92
561730	Landscaping Services	13	896
484220	Specialized Freight (except used goods) trucking, local	25	614
541330	Engineering (general)	4	185
541370	Survey and Mapping (except geophysical) services	2	10
Total		58	1,900

The data source or demonstrable evidence used to derive the numerator was:

- <https://mnucp.metc.state.mn.us/>
- <https://dot.sd.gov/doing-business/contractors/dbe>
- <https://secure.iowadot.gov/DBE/Home/Index>

The data source or demonstrable evidence used to derive the denominator was:

US Census Bureau, <https://data.census.gov>

Dividing the total number of DBEs by the total number of All Firms gives a base DBE availability figure for each contract. The availability figures for all contracts were then combined and averaged to provide the basis for the three-year overall goal.

The base goal projections are as follows:

- Fiscal Year #1 2024 – 3%
- Fiscal Year #2 2025 – 2%
- Fiscal Year #3 2026 – 3%

Average of unweighted availability: $(3\% + 2\% + 3\%)/3 = 2.7\%$

Unweighted DBE Goal at Step 1: 2.7%

Step 2: Adjustments to Step 1 base figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal.

Past History Participation

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, the **City of Fairmont** is adopting the Step 1 base figure as the overall goal for this three-year goal period.

Furthermore, there are no relevant disparity studies applicable to the **City of Fairmont's** contracting program and market area.

Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.

The City of Fairmont will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

The City of Fairmont estimates that in meeting the established overall goal of **2.7%**, it will obtain 0% from RN participation and 2.7% through RC measures.

This breakout is based on:

The City of Fairmont does not have a history of DBE participation or over-achievement of goals to reference and expects to obtain its DBE participation through the use of DBE contract goals or a conscious effort to obtain DBE participation. Therefore, the entire goal of 2.7% is to be obtained through race-conscious participation.

The City of Fairmont will monitor DBE participation on an ongoing basis during the goal period and adjust the estimated breakout of RN and RC DBE participation as needed.

PUBLIC PARTICIPATION

Consultation:

In establishing the overall goal, **the City of Fairmont** provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the **City of Fairmont's** efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation process are as follows.

The consultation engaged in was a video conference, which was on **February 19, 2025 at 9:30 a.m. central standard time. No public comments were received during the course of the consultation.**

A notice of the proposed goal was published on the **City of Fairmont** official website before the methodology was submitted to **FAA**. The notice can be found here: <https://fairmont.org/>

Prior to the consultation, a notice was published in the **Sentinel** regarding the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the **City of Fairmont** offices for 30 days following the date of the notice, and informing the public that the **City of Fairmont** will accept comments on the goals for 30 days from the date of the notice.

If the proposed goal changes following review by **FAA**, the revised goal will be posted on **the City of Fairmont** official website.

Notwithstanding paragraph (f)(4) of §26.45, **the City of Fairmont** proposed goals will not be implemented until the stakeholder consultation requirement has been met.

PUBLIC NOTICE

The City of Fairmont hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of **2.7%** for **FAA**-funded contracts/agreements. **The City of Fairmont** estimates that in meeting the established overall goal of **2.7%**, it will obtain 0% from RN participation and 2.7% through RC measures. The proposed goal pertains to federal fiscal years **2024** through **2026**. A **teleconference** will be held February 19, 2025 at 9:30 a.m. central standard time for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process.

Microsoft Teams meeting

Join on your computer, mobile app or room device

<https://tinyurl.com/5f7rvaza>

Join with a video conferencing device

webexsip@m.webex.com

Video ID: 113 639 551 6

<https://tinyurl.com/vea9urfw>

Or call in (audio only)

+1 701-526-4434,,875356827# United States, Fargo

Phone Conference ID: 875 356 827#

The proposed goal and its attendant methodology are available for inspection **between 8:00 a.m.** and **5:00 p.m.** Monday through Friday at **City of Fairmont** 100 Downtown Plaza, Fairmont, MN, for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Matt York

Director of Public Works/Utilities

100 Downtown Plaza, Fairmont, MN 56031

507-238-3942

myork@fairmont.org

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION STATEMENT

All bidders shall submit to KLJ five (5) business days after bid opening.

Email: aviation.admin@kljeng.com

Fax: 855-288-8055

Submit a completed copy of this form with the bid proposal.

The undersigned bidder/offeror has satisfied the requirements of the bid specifications in the following manner. *(Mark the appropriate box.)*

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts (GFE).

The undersigned hereby further assures that the information included herein is true and correct and that the DBE firm or firms identified within the submitted Letter of Intent forms have agreed to perform a commercially useful function for the indicated work elements.

The undersigned further understand that no changes to this statement may be made without prior approval from the Owner and the Federal Aviation Administration.

Bidder's/Offerors Firm Legal Name

State Registration Number

Representative Name & Title

Representative Signature

Date

DBE UTILIZATION SUMMARY

	Contract Amount		DBE Amount	Contract %
DBE Prime Contractor	\$ _____	x 1.00 =	\$ _____	%
DBE Subcontractor	\$ _____	x 1.00 =	\$ _____	%
Trucking	\$ _____	x 1.00 =	\$ _____	%
DBE Supplier				
Regular Dealer / Supplier	\$ _____	x 0.60 =	\$ _____	%
Broker	\$ _____	x 0.00 =	\$ _____	%
Distributor	\$ _____	x 0.40 =	\$ _____	%
Manufacturer	\$ _____	x 1.00 =	\$ _____	%
Total Amount DBE			\$ _____	%
DBE Goal			\$ _____	%

* If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26. DBE participation percentage for bidding purposes will be based on total bid prices for all Schedules and Division, and all possible alternates that may be awarded.

FORM 2: LETTER OF INTENT

DBE Form C Notification of Intent to Use

Submit a completed copy of this form with the Bid Proposal.

All bidders shall submit to this completed form to KLJ within five (5) business days after the bid opening.

Email: aviation.admin@kljeng.com

Fax: 855-288-8055

1. **ALL** bidders shall submit an individual Form C for each DBE and non-DBE to be used on the project.
2. The Contractor and DBE or non-DBE shall both sign the form. Faxed, scanned, or photocopied signatures are acceptable. Form C applies to all tiers of subcontractors for DBE achievement credit to be given.
3. If Form C contains additional pages or attachments, both parties must sign each page or attachment.
4. Explain any difference between the information on Form A and Form C in the comments section below.
5. **This form is required for both DBE and Non-DBE subcontractors and suppliers.**

This form is not a contract and does not take the place of any contract. This form indicates that all DBEs listed on Form A will be used on the project.

AIP Number	
Bid Opening Date	

Prime Contractor Name	
Prime Contractor Address	
Prime Contractor Phone	
Prime Contractor Email	
Prime Contractor Authorized Representative Name & Title	

Intended Subcontractor Name	
Intended Subcontractor Address	
Intended Subcontractor Phone	
Intended Subcontractor Email	
Intended DBE / Non-DBE Status	<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE
Intended Subcontractor Authorized Representative Name & Title	

Bid Item #	NAICS Code	Work Description <i>(For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55)</i>	(DBE) % of work to be done with own forces	Type of Work **	Approx. Quantity	Unit Costs	Amount
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			

Bid Item #	NAICS Code	Work Description <i>(For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55)</i>	(DBE) % of work to be done with own forces	Type of Work **	Approx. Quantity	Unit Costs	Amount
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
				<input type="checkbox"/> Contractor <input type="checkbox"/> Trucking **DBE SUPPLIERS <input type="checkbox"/> Manufacturer <input type="checkbox"/> Regular Dealer / Supplier <input type="checkbox"/> Distributor <input type="checkbox"/> Broker			
Total							

**For DBE Suppliers only, state how the DBE will perform using one of the 4 available check boxes for DBE SUPPLIERS. Additional information on the definitions is available on DBE Supplier Definitions document in the Project Manual.

**For dealer/distributor/broker, OMB Control #2105-0586 – DBE Regular Dealer / Distributor Affirmation Form must be included. This form is included in the Project Manual.

Are there any agreements not addressed in your quote? Yes No If yes, explain:

For 1:1 DBE Trucking Participation

Non DBE Company Name	
Number of Trucks Provided	

Total Number of Trucks to Work on Project

DBE Owned / Operated Trucks		Non-DBE Match Trucks		Non-DBE <u>Non</u> -Match Trucks	
Number of Trucks	Total Dollar Amount	Number of Trucks	Total Dollar Amount	Number of Trucks	Total Dollar Amount

Any changes to this 1:1 DBE Trucking Commitment must be reported to the Engineer. (See DBE Trucking Companies document in the Project Manual.)

Total Number of Trucks		Total Dollar Amount	
------------------------	--	---------------------	--

Comments: Use the space below to explain any differences between the amounts, units, work descriptions, spec items, quantities and totals between those indicated on Form A as submitted with the bid proposal and this Form C.

--

- Women Owned Business
- Men Owned Business

	Total DBE Award Amount by Ethnicity		
	Female	Male	Total
Black American			
Hispanic American			
Native American			
Asian-Pacific American			
Subcontinent Asian American			
Non-Minority			
Total			

The undersigned bidder/offeror is committed to utilizing the above-named DBE / Non-DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE / Non-DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form, it may not substitute or terminate the DBE / Non-DBE listed above without following the procedures of 49 CFR Part 26, §26.53 and the DBE Replacement Good Faith Efforts.

Prime Contractor / Subcontractor Signature	Title	Date
--	-------	------

The undersigned DBE / Non-DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above. A firm designated as a DBE firm affirms that it is properly certified to be counted for DBE participation therefore.

Intended DBE / Non-DBE Signature	Title	Date
----------------------------------	-------	------

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Notification of Intent to Use shall be null and void.

North American Industry Classification System (NAICS) code information can be found at <https://www.naics.com/search/>.

Form 3: DBE Regular Dealer/Distributor

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below. If "NO" Continue.**)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?

YES² NO³

a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

[Signature line]

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

[Signature line]

Affirmation Form

ATTACHMENT 7

Administrative Enforcement Mechanisms

The **City of Fairmont** has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as follows:
adherence to Local and State Provisions and FAA General Provisions.
2. Breach of contract action, pursuant to Minnesota Statute chapter 336, part 6.
3. MnDOT Equal Employment Opportunity Policy
4. Sexual Harassment Policy
5. Title VII of the Civil Rights Act of 1964

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

Minnesota's State UCP Agreement can be found here:
<https://mnucp.org/About/About-the-MNUCP.aspx>

ATTACHMENT 10

Small Business Element

1. Objective/Strategies

(1) Firms meeting the definition of a small business, as described below, will be encouraged to participate for award of all prime contracts, particularly those less than \$100,000.

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, encouraging the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Consider and identify, where appropriate, alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

DBE firms and Small Businesses shall be identified in the Minnesota Department of Transportation (MnDOT) Civil Rights Program.

- Sizing requirements are administered by MnDOT Civil Rights and are consistent of 49 CFR 26.5 and no larger than the Small Business Administration’s size standards.
- Personal Net Worth standards are as defined by MnDOT Civil Rights and are consistent with 49 CFR Part 26 thresholds.
- All businesses meeting the criteria outlined in this section will be considered to be small businesses, without regard to race or gender.

3. Verification

- The Sponsor’s consultant shall review each prime contract and subcontract to determine if a business is a Certified Small Business as listed by Minnesota DOT Civil Rights on <https://www.dot.state.mn.us/civilrights/find-small-business.html>.

4. Monitoring/Record Keeping

- The Sponsor will track and report any race-neutral participation by certified DBEs achieved through their small business element or program in the same way they report

race-neutral DBE participation obtained through the uniform reporting methods under 49 CFR §26.11(a).

- The Sponsor will collect data on small business participation obtained through their bidder's lists.

5. Assurances

- The program is permitted under state law;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).