

## CITY OF HUTCHINSON DBE PROGRAM

**2023-2025**

### STATEMENT

#### **Section 26.1, 26.23 Objectives/Policy Statement**

The City of Hutchinson, [herein after referred to as the “City”], owner of Hutchinson Municipal Airport - Butler Field, 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 has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City 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 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’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 the cities of Federal financial assistance in establishing and providing opportunities for DBEs.

John Olson, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, John Olson 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 in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City Council 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 City DOT-assisted contracts. We have further informed the business community that works on DOT-assisted contracts through the inclusion of DBE goal requirements into project bidding/contract documents. DBE reporting documentation is included as an attachment to this policy.

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John Olson, Airport Manager

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

### **Section 26.5 Definitions**

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

### **Section 26.7 Non-discrimination Requirements**

The City 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 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 Record Keeping Requirements**

#### **Reporting to DOT**

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

DBE participation will be reported to the FAA as follows:

The City will transmit to Federal Aviation Administration (FAA) annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The City will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

#### **Bidders List**

The City will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on

the City DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. This information will be collected from the form in Attachment 3.

Records retention and reporting:

The City will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the City 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 City 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 Federal Financial Assistance Agreement**

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

Assurance: - Each financial assistance agreement the City signs with a DOT operating administration will include the following assurance:

The City 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 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 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 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 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:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

## ADMINISTRATIVE REQUIREMENTS

### **Section 26.21 DBE Program Updates**

The City 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 is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the City is in compliance with it and Part 26. The City will continue to carry out this program until all funds from DOT financial assistance have been expended. The City 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 for DOT 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 Hutchinson:

John Olson  
Airport Manager  
HATS  
1400 Adams Street  
Hutchinson, MN 55350  
(320) 234-4219  
jolson@ci.hutchinson.mn.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Council of the officer of the City 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 DBELO has a staff of one (1) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.

9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process. [N/A]
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs. [N/A]

#### **Section 26.27 DBE Financial Institutions**

It is the policy of the City 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.

*A search for DBE Financial Institutions in Minnesota was made through the FAA Matchmaker System (NAICS Code 522110) and there are none listed at this time. A new search will be conducted every 3 yr. cycle when program is updated.*

#### **Section 26.29 Prompt Payment Mechanisms**

The City 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.

In accordance with 49 CFR §26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the City.

The City ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the City has selected the following method to comply with this requirement (Option 3):

The Owner may 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 30 days after the Owner's payment to the prime Contractor.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

To implement this measure, the City includes the following clause from FAA Advisory Circular 150/5370-10 (Section 90-06) in each DOT-assisted prime construction contract:

*“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. The Owner must ensure prompt and full payment of retainage from 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. From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner until the final payment is made, except as may be provided (at the Contractor’s option) in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section. The balance [ insert balance ] of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his or her option, as provided in the subsection 90-08 titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.*

*When at least 95% of the work has been completed, the Engineer 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.”*

### **Section 26.31 Directory**

The City is a non-certifying member of the MN DOT Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

Mn/DOT Office of Civil Rights  
195 John Ireland Blvd, MS 410  
St. Paul, MN 55107  
(651) 366-3073  
<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/state-dot-and-dbe-program-websites>

### **Section 26.33 Over-concentration**

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

### **Section 26.35 Business Development Programs**

The City of Hutchinson has not established a Business Development Program.

### **Section 26.37 Monitoring Responsibilities**

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the City of Hutchinson DBE program.

The City actively monitors participation by maintaining a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

#### Monitoring Payments to DBEs and Non-DBEs

The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract.

The City 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's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of City of Hutchinson or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

#### Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29. This would include meeting with the Prime of DBE subcontractors for the purpose of resolving the dispute between the parties. Enforcement action would include withholding of final payment to Prime until the dispute is resolved and documented.

The City 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)

- i.* The following subsection 70-22 Dispute Resolution is added to each prime contract:

#### **SUBSECTION 70-22 – DISPUTE RESOLUTION**

*Add the following Subsection 70-22 to Section 70 of the FAA General Provisions (AC150/5370-10)*

OWNER and CONTRACTOR agree that they shall submit any and all unsettled claims, counterclaims, disputes or other matters in question between them arising out of or relating to the Contract Documents or the breach thereof to the following Mediation / Arbitration procedure for dispute resolution.

1. Mediation Procedure

a. Notice to Invoke Procedure

Should a dispute arise over the interpretation or application of this Agreement, which cannot be resolved by negotiations between the parties, they shall invoke this Mediation Procedure before proceeding to litigation. Either party may invoke the Procedure by giving written notice to the other. The notice shall include the designation of an executive officer with authority to engage in mediation and settle the dispute.

b. Response

Within fourteen (14) business days of a notice given as provided above, the other party shall respond, designating an executive officer with authority to engage in mediation and settle the dispute on its behalf.

c. Submission

Within five (5) business days of a response given as provided above, the parties shall select a mutually acceptable neutral third party, who shall act as mediator, and schedule the first mediation session to resolve the dispute. All mediation meetings shall be held at the offices of the Owner unless otherwise agreed.

d. No Resolution through Mediation

In the event the parties are unable to reach a resolution of the dispute through the Mediation Procedure, described herein, each party agrees to enter into Arbitration in accordance with the terms and conditions of Subsection 70-22, 2 of the Supplementary Provisions.

e. Confidentiality

To the extent permissible under Minnesota Data Practices Act and the Minnesota Open Meeting Law, by entering into this Mediation Procedure, the parties shall be taken to agree that the entire proceeding is confidential; that the parties, their representatives and the Neutral Third Party must keep confidential all statements, whether oral or written, made in this proceeding, and all other matters relating to the proceeding, including the settlement agreement, except when, and insofar as its disclosure is necessary to implement and enforce such agreement. All such matters will be inadmissible and not subject to discovery in any litigation, arbitration, or other proceeding.

The Neutral Third Party will be disqualified as a witness, consultant, or expert for any part to this proceeding, and his opinions, records or notes in this proceeding will be inadmissible in any litigation, arbitration or other proceeding.

2. Arbitration Agreement

- a. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by Subsection 90-09) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then



obtaining, subject to the limitations of this Article 16.02. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16.02 will be specifically enforceable under the prevailing law of any court having jurisdiction.

- b. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with Subsection 50-01 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with Subsection 50-01; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER will be made later than thirty (30) days after the party making such demand has delivered written notice of intention to appeal.
- c. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 2.b as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in event shall any such demand be made after that date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- d. Except as provided in paragraph 2.e below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:
  - 1. The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
  - 2. Such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
  - 3. The written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

- e. Notwithstanding paragraph 2.d if a claim, dispute or other matter in questions between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER AND CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts a specific provision whereby the Subcontractor consents to being joined in arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 2.e nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER, or ENGINEER's Consultants that does not otherwise exist.
- f. If the amount of the dispute submitted for arbitration was less than or equal to \$ 15,000, the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.
- g. If the amount of the dispute submitted for arbitration was greater than \$ 15,000, the award rendered by the arbitrators may be accepted by all parties and judgment may be entered upon it in any court having jurisdiction; or any party may choose to reject the proposed award of the arbitrators and elect to pursue other legal remedies that are available.
- h. OWNER and CONTRACTOR 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 the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 2.a through 2.f, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty- and ten-day time limits within which to file a demand for arbitration as provided in paragraphs 2.b and 2.c above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

(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.

Section 6.03 Progress Payment to Subcontractors (DBEs) include the following:

6.03 *Progress Payment to Subcontractors*

- A. For contracts within the State of Minnesota, MN Statute 471.425 Subd. 4a. shall apply. MN Statute 471.425 Subd. 4a. requires:
  - 1. The prime contractor shall pay any subcontractor within ten days of the prime contractor's receipt of payment for undisputed services provided by the subcontractor.
  - 2. The prime contractor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor.

3. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor.
4. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.”

#### Prompt Payment Complaints

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

- a. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- b. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, affected subcontractor may contact the responsible the FAA contact.
- c. 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 will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime

The City will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The City 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. Work site monitoring is performed by program managers/consultant. Contracting records are reviewed by the compliance team. The City will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

**Section 26.39 Fostering small business participation**

The City 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 9 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the City to be considered by DOT as implementing this DBE program in good faith.**

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 Set-asides or Quotas**

The City does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

The City 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 will submit its Overall Three-year DBE Goal to the FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the [website](#) of FAA.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1, 2022 (2023/2024/2025)	August 1, 2025 (2026/2027/2028)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City 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 City 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 will use the *DBE Directory information and Census Bureau Data* as a method to determine the base figure. The City 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 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 market.

In establishing the overall goal, the City 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 City 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 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 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 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’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 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 Hutchinson. This notice will provide that the City and the FAA 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) where the proposal may be reviewed.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the City of Hutchinson responses.

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

### Project Goals

If permitted or required by the FAA Administrator, 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 must

meet all the substantive and procedural requirements of this section 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.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### Prior Operating Administration Concurrence

The City 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 City for calculating goals is inadequate, the FAA may, after consulting with the City, adjust the overall goal or require that the goal be adjusted by the City. 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 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 fails to administer its DBE program in good faith.

The City 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 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 will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to FAA for approval.

## **Section 26.51 Means Recipients Use to Meet Overall Goals**

### Breakout of Estimated Race-Neutral & Race-Conscious Participation

The City 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;
- (6) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (7) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (8) 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.

### 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 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 the total number of available DBEs divided by the total number of firms.

### **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.

The 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 Responsive.

The City 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:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) 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;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) 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.



- (vi) 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; and
3. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
  4. Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

#### Administrative reconsideration

Within 5 days of being informed by the City of Hutchinson that it is not responsive 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: **[Matt Jaunich, City Administrator, 111 Hassan St SE, Hutchinson, MN 55350, (320) 234-5650, [mjaunich@hutchinsonmn.gov](mailto:mjaunich@hutchinsonmn.gov)]**. 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 so. 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)

The awarded contractor will be required 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.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the City agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The City determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides the City written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that the City has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the City of Hutchinson a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the City and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.*, safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of City as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the

contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The City shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the City may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### **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).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit 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.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The City is a non-certifying member of the Minnesota Unified Certification Program (UCP). The 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:

*Mn/DOT Office of Civil Rights*

*195 John Ireland Blvd, MS 410*

*St. Paul, MN 55107*

*(651) 366-3073*

*<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/state-dot-and-dbe-program-websites>*

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

The City of Hutchinson is the member of a Unified Certification Program (UCP) administered by a group of state and local agencies.

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

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to the City of Hutchinson.**

The City understands that if it fails to comply with any requirement of this part, the City 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.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties

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, 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 understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Fostering Small Business Participation
- Attachment 11 Small Business Element

## **ATTACHMENT 1**

### Regulations: 49 CFR Part 26

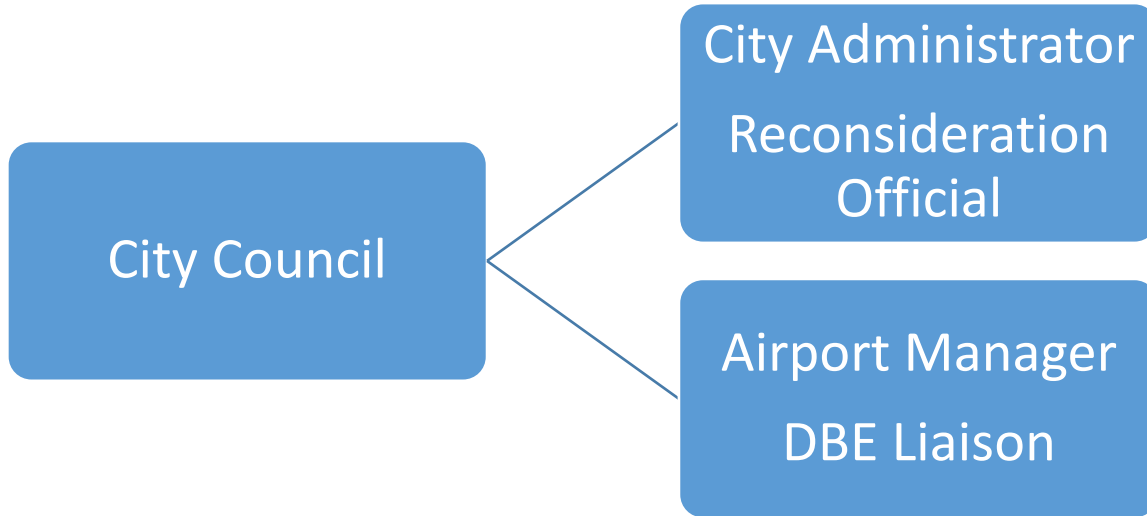
DOT published Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, formally administered under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Four (4) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010 and January 28, 2011 which made additional revisions to the regulation. The e-version of the regulations has combined all of these documents into one for easy reading.

The e-CFR data is current as of January 11, 2017.

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c557e0c662d8af4ad52a31b56b5bb2f2&n=49y1.0.1.1.20&r=PART&ty=HTML>

**ATTACHMENT 2**

**Organizational Chart**





### ATTACHMENT 3 Bidder's List Collection Form

**DOCUMENT 00418 - DBE CERTIFICATE OF GOOD FAITH EFFORTS**

TITLE 49 CFR 26

Project Name: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Low Bid: \_\_\_\_\_

DBE Goal: \_\_\_\_\_

Total DBE Commitment: \_\_\_\_\_

**LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS**

Subcontractor/Supplier/Service Provider	DBE?		Small Business? (as defined by § 26.65)		Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No	Yes	No		Letter	Phone		
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

(Make additional copies of this form as necessary)

Form to be completed and submitted with the Bid Documents

**ATTACHMENT 4**

DBE Directory

State DOT and DBE Program Website: <https://www.transportation.gov/DBE%20State%20Websites>

**ATTACHMENT 5**

Overall DBE Three-Year Goal Methodology

**Name of Recipient:** The City of Hutchinson, owner of the Hutchinson Municipal Airport - Butler Field (HCD)

**Goal Period:** FY-2023-2024 -2025– October 1, 2022 through September 30, 2025

**Overall Three-Year Goal:** 5.4%, to be accomplished through 5.4% RC and 0% RN

**Total project dollars:** \$1,875,000

**Total dollar amount to be expended on DBE’s:** \$101,250

**Describe the Number and Type of Projects that the airport anticipates awarding:**

2023-2025 HCD MUNICIPAL AIRPORT	
Project (FFY XXXX)	DBE Eligible Project Cost (Federal \$)
Multi-Bay Hangar Construction (FFY 2023)	\$ 1,100,000.00
Runway 15/33 Lighting Replacement (FFY 2023)	\$ 600,000.00
Infield Drainage Improvements (FFY 2024)	\$ 175,000.00
<b>Total</b>	<b>\$ 1,875,000.00</b>

**Market Area:**

The market area was determined by selecting counties within a 50-mile radius of the Hutchinson Municipal Airport - Butler Field.

Brown	MN	McLeod	MN	Scott	MN
Carver	MN	Meeker	MN	Sherburne	MN
Chippewa	MN	Nicollet	MN	Sibley	MN
Hennepin	MN	Redwood	MN	Stearns	MN
Kandiyohi	MN	Renville	MN	Wright	MN
Le Sueur	MN				

**Step 1. 26.45(c) Actual relative availability of DBE’s**

The relative availability of DBE’s has been calculated by dividing the total number of DBE’s by the total number of All Firms = base figure for each project. The overall base figure for more than one project, adds all the project percentages together.

NAICS Code	Description	% of Work	# of Firms	# of DBE's	% DBE
236220	Building Construction	34.0%	316	19	6.0%
237310	Construction	16.8%	79	17	21.5%
237990	Ditch/Drainage	4.7%	20	4	20.0%
238210	Electrical	22.0%	561	13	2.3%
238910	Site Prep	1.6%	305	21	6.9%
484220	Trucking	2.2%	388	31	8.0%
541330	Engineering	15.7%	398	33	8.3%
541370	Imagery/Survey	1.0%	20	5	25.0%
561730	Landscaping	2.0%	987	24	2.4%
		<b>100.0%</b>	<b>3074</b>	<b>167</b>	<b>5.4%</b>

There are no recent achievements to use to adjust the goal. Furthermore, there are no applicable disparity studies, recent legal case information from the relevant jurisdictions, or evidence from related fields, that indicates evidence of barriers to entry or competitiveness of DBE’s in the market area, that is sufficient to warrant making any further adjustment. The City of Hutchinson is adopting Step 1 and the overall goal of 5.4 percent.

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

The City 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 estimates that in meeting its overall 5.4 goal, it will obtain 0% from RN participation and 5.4 through RC measures.

The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE Participation and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contracts that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

## PUBLIC PARTICIPATION

### **Consultation:**

In establishing the overall goal, the City of Hutchinson 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 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 are as follows.

*A video conference was held on February 17, 2023 at 10:00 a.m. The Minnesota DBE Directory was used to invite DBEs performing the types of work (NAICS Code) within the scope of upcoming projects as well as some Contractors who have bid on previous projects in the area. Projects and goal were reviewed and opened for question or comments on the goal methodology.*

*The following comments were received during the course of the consultation:  
No comments were received.*

A notice of the proposed goal was published on the City's official website before the methodology was submitted to Federal Aviation Administration.

Following the consultation, a notice 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 offices for 30 days following the date of the notice, and informing the public that the City will accept comments on the goals for 30 days from the date of the notice.

**Comments [list] / No comments were received.**

If the proposed goal changes following review by the FAA, the revised goal will be posted on City's official website.

Notwithstanding paragraph (f)(4) of §26.45, the City's proposed goals will not be implemented until this requirement has been met.

***Sample Public Notice Language:***

**PUBLIC NOTICE**

The City of Hutchinson hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 5.4% for FAA funded contracts/agreements. The proposed goal pertains to federal fiscal years 2023 through 2025. The proposed goals and rationale are available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at HATS, 1400 Adams Street, Hutchinson, MN 55350 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:

John Olson  
Airport Manager  
HATS  
1400 Adams Street  
Hutchinson, MN 55350  
(320) 234-4219  
jolson@ci.hutchinson.mn.us

AND

Federal Aviation Administration  
Office of Civil Rights  
Nancy Cibic  
FAA Great Lakes Regional Office  
3246 N. Heritage Lane  
Arlington, IL 60004  
Nancy.Cibic@faa.gov  
[http://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/](http://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/)

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts2**

**DOCUMENT 00417 - DBE LETTER OF INTENT**  
**TITLE 49 CFR 26**  
*(This page shall be submitted for each DBE firm)*

**Bidder/Offer:** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Firm:** DBE Firm: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE Contact Person:** Name: \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

**DBE Certifying Agency:** \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
*Each DBE Firm shall submit evidence (such as a photocopy) of their certification status*

**CLASSIFICATION:**  Prime Contractors  Subcontractors  Joint Venture  
 Manufacturer  Supplier

**DBE CATEGORY:**  Black American  Hispanic American  
 Native American  Subcont. Asian American  
 Asian Pacific American  Non-minority Women

Work item(s) to be performed by DBE	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above in an effort to meet the project DBE goal of 6.3 Percent of total contract: \_\_\_\_\_ %

**AFFIRMATION:**  
 The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
(Signature) (Title)

In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

FORM TO BE COMPLETED AND SUBMITTED WITH THE BID DOCUMENTS

DOCUMENT 00418 - DBE CERTIFICATE OF GOOD FAITH EFFORTS

TITLE 49 CFR 26

Project Name: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Low Bid: \_\_\_\_\_

DBE Goal: \_\_\_\_\_

Total DBE Commitment: \_\_\_\_\_

LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Subcontractor/Supplier/Service Provider	DBE?		Small Business? (as defined by § 26.65)		Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No	Yes	No		Letter	Phone		
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

(Make additional copies of this form as necessary)

Form to be completed and submitted with the Bid Documents



## ATTACHMENT 7

### **DBE Monitoring and Enforcement Mechanisms**

The City 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.

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

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.

**ATTACHMENT 8**  
DBE Certification Application Form

<https://www.transportation.gov/sites/dot.gov/files/2021-02/uniform-certification-application-2.8.2021.pdf>

**ATTACHMENT 9  
STATE UCP AGREEMENT**

**MINNESOTA:**

[https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/POST\\_Minnesota\\_Final\\_UCP\\_Review\\_42213.pdf#:~:text=The%20Minnesota%20Unified%20Certification%20Program%20%28MnUCP%29%20members%2C%20which,the%20selection%20of%20compliance%20elements%20that%20were%20reviewed.](https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/POST_Minnesota_Final_UCP_Review_42213.pdf#:~:text=The%20Minnesota%20Unified%20Certification%20Program%20%28MnUCP%29%20members%2C%20which,the%20selection%20of%20compliance%20elements%20that%20were%20reviewed.)

**ATTACHMENT 10**

**FOSTERING SMALL BUSINESS PARTICIPATION**

**TITLE 49 CFR 26.39 (This page shall be submitted for each Small Business firm)**

In accordance with Section 26.39, detailed information shall be completed by the Prime Contractor for work items. The firms listed may or may not be certified DBE's.

**Bidder/Offer:** Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Small Business Firm:** Small Business Firm \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**Contact Person:** Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**CERTIFICATION:** Is the firm a Small Business as defined by Section 26.65  
 Yes  No  
 \*Proof of eligibility may be requested

**CERTIFIED DBE:** Is the firm a Certified DBE?  
 Yes  No

Work item(s) to be performed by Small Business Firm	Description of Work Item	Cost	Percentage of Total Contract

The bidder/offeror is committed to utilizing the above-named Small Business firm for the work described above in an effort to foster Small Business participation. The estimated participation is as follows:

Small Business contract amount: \$ \_\_\_\_\_ Percent of total contract: \_\_\_\_\_ %

**AFFIRMATION:**

The above-named Small Business firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: \_\_\_\_\_  
(Signature) (Title)

**In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

**FORM TO BE COMPLETED AND SUBMITTED BY APPARENT LOW BIDDER WITHIN 5 DAYS OF THE BID OPENING**

**ATTACHMENT 11**  
**Small Business Element**

A. Objective/Strategies

Recognizing that the DBE Program goals are met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses; the Airport Sponsor seeks to implement a small business element into its current DBE policy. The Airport Sponsor is including this element to facilitate competition by and expand opportunities for small businesses. The Sponsor is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as prime contractors or subcontractors. If necessary and where appropriate, the Sponsor will meet its objectives using a combination of the following methods and strategies:

1. Race-neutral small business set-asides:

Where feasible, the Sponsor will establish a percentage of the total value of all project contracts over \$1 million to be set aside for participation by small businesses on FAA-assisted contracts. A “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. This encourages the prime contractors/consultants set aside a portion of the value of each contract for participation by small businesses. A small business set-aside is open to all small businesses regardless of the owner’s gender, race or geographic location. The prime contractor will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the set aside percentage. This set aside is in addition to the DBE contract goals which may be required pursuant to applicable law or policy.

2. Multi-year design/build contracts:

For larger “mega projects” that are compatible with the design/build procurement policy, the Sponsor will require the bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small business, including DBEs, can reasonably perform.

3. Unbundling larger projects:

To meet the portion of the overall DBE goal through race-neutral measures, the Sponsor, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The Sponsor will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the Sponsor will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

4. Continued outreach:

The sponsor will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

B. Definitions

1. Small Business:

A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

C. Implementation Schedule

The Sponsor will implement this small business element within 6 months of FAA's approval of the update of the DBE plan.

D. Assurances

The Sponsor makes the following assurances:

1. Assurance that the program is authorized under state law;
2. Assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. Assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. Assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
5. Assurance that steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified; and
6. Assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).
7. Continued outreach:

The sponsor will continue to actively conduct outreach with organizations in accordance with procedures of the DBE program.

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