

RED WING REGIONAL AIRPORT

City of Red Wing, Minnesota

DBE PROGRAM – 49 CFR PART 26

City of Red Wing
315 West 4th St.
Red Wing, MN 55066

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Red Wing 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.

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 our policy:

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

The Engineering Director has been delegated as the DBE Liaison Officer. In that capacity, the Director 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 its members and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by including this policy statement in all bid documents.

Ron Rosenthal
Engineering Director

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found 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 the meaning defined in Section 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: 26.11

(b) You must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor’s Form or other similar format.

Bidders List: 26.11(c)

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 our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following ways:

A notice in all solicitations requiring the information from bidders as well as a request to firms quoting on subcontracts to report information directly to the recipient.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must 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's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

The City will ensure that the following clause is included in each contract we sign 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 City deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

The City is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

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)

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

Ron Rosenthal
Engineering Director
City of Red Wing
315 West 4th St.
Red Wing, MN 55066
651.385.3600
ron.rosenthal@ci.red-wing.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 Mayor concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found 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 one additional internal staff member to assist in the administration of the program and also relies on the assistance of their consulting engineer. 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 City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Acts as liaison to the Uniform Certification Process in Minnesota.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

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. We have been unable to locate any financial institutions in the Red Wing area which are owned and controlled by socially and economically disadvantaged individuals.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer if and when firms become available.

Section 26.29 Prompt Payment Mechanisms

The City has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will 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. We will use one of the following methods to comply with this requirement:

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 your payment to the prime contractor.

The City will consider 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 City. When City 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.

The City will provide appropriate means to enforce the requirements of this section. These means include:

1. Withholding of payment to the Contractor under the contract until he/she complies;
2. Cancellation, termination, or suspension of the contract in whole or in part;
3. Any other available legal remedy

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from City. The prime contractor agrees further to return retainage payments to each subcontractor within 15 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- (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.
- (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

Section 26.31 Directory

The City uses the State of Minnesota DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Minnesota revises the Directory weekly. The Directory may be found at <http://mnucp.metc.state.mn.us/Default.aspx>

Section 26.33 Over-concentration

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

Section 26.35 Business Development Programs

The City has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The City will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
3. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this

purpose. This will be accomplished by contractor and sub-contractor monitoring by the Resident Project Representative and review of all payments at project closeout.

4. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

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 City's small business program element is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation, doing so is a requirement of good faith implementation of our DBE program.

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 we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Small Hub Primary	All Regions	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Hub Primary	All Regions	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. 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 more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust 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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, the City will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at The Red Wing City Hall for 30 days following the date of the notice, and informing the public that the City and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

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 will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) City will retain in our records for three years, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

Section 26.51(d-g) Contract Goals

The City 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.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

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

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

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

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

Ron Rosenthal – Engineering Director, with assistance from the Project Engineer, 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.

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

Information to be submitted (26.53(b))

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

Responsibility- Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within 3 business days of being notified that they are the successful bidders, but before the contract is executed:

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

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by the City that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: State of Minnesota Department of Transportation, Office of EEO, 395 John Ireland Blvd., St. Paul, MN 55155. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our 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:

- (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, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (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 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us 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;
- (10) Other documented good cause that we have 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 us its 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of xx percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract 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.

SUBPART D – CERTIFICATION STANDARDS**Section 26.61 – 26.73 Certification Process**

The City will rely on the State of Minnesota to develop and implement the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBE's in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The State of Minnesota will make certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:
http://mnucp.org/DBE_Applicants.html

The certification application forms and documentation requirements are found online at:
http://mnucp.org/DBE_Applicants.html

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City is the member of a Unified Certification Program (UCP) administered by the State of Minnesota. The UCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

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

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

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

ATTACHMENT 1

Regulations: 49 CFR Part 26 can be accessed at:

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT 3
Bidder's List Collection Form

BIDDERS LIST FORM

Please provide the following data:

Business Name: _____

Business Address:

Street	City	State	Zip
--------	------	-------	-----

County Business is located in: _____

Name of Contact Person: _____

Phone: _____ 6. Fax: _____

Email Address: _____

Is this business certified as a Disadvantaged Business Enterprise? a. Yes b. No

Business Annual Gross Receipts:

- a. Less than \$500,000 b. \$500,000 to \$1,000,000 c. \$1,000,000 to \$2,000,000
- d. \$2,000,000 to \$5,000,000 e. Over \$5,000,000

Age of Business: _____ Years _____ Months

ATTACHMENT 4

State of Minnesota DBE Directory can be found at:

<http://mnucp.metc.state.mn.us/Default.aspx>

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: The City of Red Wing (Red Wing Regional Airport)

Goal Period: FY 2014-2015-2016 – October 1, 2013 through September 30, 2016

DOT-assisted contract amount:

FY-2014	\$0.
FY-2015	\$414,000.
FY-2016	\$0.

Total **\$414,000.**

Overall Three-Year Goal: 4.0%, to be accomplished through 4.0% RC and 0.0% RN

Total dollar amount to be expended on DBE's: \$16,560.

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

Projects Fiscal Year #1
No Projects.

Projects Fiscal Year #2
1. Reconstruction of Apron & Taxiway

Projects Fiscal Year #3
No Projects.

Market Area:

Step 1. Analysis: Actual relative availability of DBE's

Method: Use DBE Directory - <http://mnucp.metc.state.mn.us/Default.aspx>

and Census Bureau Data <http://www.census.gov/econ/cbp/index.html>

NAICS	Type of Work	Total DBE's	Total All Firms
See calculations below			
Total			

Divide the total number of DBE's by the total number of All Firms = base figure for each project.

To determine the overall base figure for more than one project, add all the project percentages together.

Step 2. Analysis: Adjustments to Step 1 base figure.

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

An examination of the anticipated projects for each fiscal year, the availability of the DBE firms by trade classification and the volume of work performed by DBE firms over previous years.

Fiscal Year #1

For FY-2014, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Project								
Total FY-2014								

Fiscal Year #2

For FY-2015, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Pavement Reconstr.	Hwy. & Street Const.	Hwy. & Street Const.	237310	\$414,000.	304	12	4.0%	\$16,560.
Total Project								
Total FY-2015								

Fiscal Year #3

For FY-2016, we anticipate the award of the following:

A	B	C	D	E	F	G	H	I
Project Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= G/F)	DBE (\$) (= E x H)
Total Project								
Total FY-2016								

Past History Participation

Other data used to determine the adjustment to the base figure was the median of historical DBE accomplishments.

The proposed Overall DBE Goals are as follows:

- Fiscal Year #1 – 0.0%
- Fiscal Year #2 – 4.0%
- Fiscal Year #3 – 0.0%

Our proposed overall three year goal will be based on DBE dollars divided by total Federal dollars.

There is no historical DBE data to reference to make an adjustment to the Step 1 base figure therefore, the City is adopting its Step 1 base figure as its overall goal for this three-year goal period.

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

26.51(b) (1-9)

The recipient will meet the maximum feasible portion of its 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. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
3. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The recipient estimates that in meeting its overall goal 4.0%, it will obtain 0.0% from RN participation and 4.0% through RC measures.

This breakout is based on:

- The City does not have a history of DBE participation on these types of projects 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, we are applying the entire goal of 4.0% to race-conscious participation.

The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) 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 a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

The City submits its overall DBE three-year goal to DOT on August 1 as required by the set schedule.

Before establishing the overall goal, the City will consult with the Red Wing Chamber of Commerce, MnDOT, State of Minnesota Minority Business Development Office, without limiting consultation to these persons or groups, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. Due to the location of the airport, face to face meetings are not always feasible. The City will consult with the Chamber of Commerce and will reach out to other organizations to gather input.

Following the consultation, we will publish a notice in the Republican Eagle of 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 administration building for 30 days following the date of the notice, and informing the public that the City and DOT will accept comments on the goals for 45 days from the date of the notice.

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

Contract Goals

The City will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the recipient's overall goal that is not projected to be met through the use of RN means.

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

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

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

.....

.....

.....

.....

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

Date: _____

(Title)

If 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.

[Submit this page for each DBE subcontractor.]

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

http://mnucp.org/DBE_Applicants.html

ATTACHMENT 9
State's UCP Agreement

The City does not have a copy of the UCP Agreement, but the following table taken from the State of Minnesota's UCP Program shows The Airport as a member.

Non-Certifying Agencies

Non-Certifying Agencies are Agencies that participate only as recipients of the DBE certifying process. Non Certifying Agencies include but are not limited to (partial listing):

City of Plymouth	St. Paul TMO
City of Princeton	Stearns County
City of Prior Lake	Steele County
City of Ramsey	Steele County Area Transit
City of Red Wing	Stevens County
City of Redwood Falls	Swift County
City of Richfield	Thief River Falls Airport
City of Robbinsdale	Timber Trails Public Transit, Inc.
City of Rochester	Todd County
City of Rochester , Municipal Airport	Trailblazer Joint Powers Board
City of Rogers	Traverse County
City of Rosemount	Tri-County Action Program, Inc.
City of Roseville	Wabasha County

ATTACHMENT 10

Small Business Element Program

A. Objective (49 CFR Part 26.39)

Recognizing that the DBE Program goals should be met through a mixture of race conscious and race neutral methods and, that by definition, DBE firms are small businesses, the City of Red Wing seeks to implement a small business element into its current DBE policy in accordance with applicable law. The City is including this element to facilitate competition by and expand opportunities for small businesses. The City 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. The City will meet its objectives using a combination of the following methods and strategies:

1. **Set asides:** Where feasible, the City will establish a percentage of the total value of all prime contract and subcontract awards 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 requires that the City and its 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 project Director and DBELO 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. In the event that a set-aside is not established on an FAA-assisted contract, the project Director and small business officer will document why a small business set-aside is inappropriate.
2. **Unbundling:** The City, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. The City will conduct contract reviews on each FAA-assisted contract to determine whether portions of the project could be “unbundled” or bid separately. Similarly, the City will encourage its prime contractors or prime consultants to unbundle contracts to facilitate participation by small businesses.

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).

2. Disadvantaged Business Enterprise:

A for-profit small business (as defined by the Small Business Administration) —

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
- Whose socially and economically disadvantaged owners do not exceed the personal net worth (PNW) does not exceed the described in 49 CFR Part 26. The current PNW cap is \$1.32 million.
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- Has been certified as a DBE by the Minnesota Department of Transportation (MNDOT) in accordance with 49 CFR 26.

For the purposes of the small business element of the City’s DBE Program, small businesses which are also owned and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts.

C. Certification and Verification Procedures

The City will accept the following certifications for participation in the small business element of the City's DBE Program with applicable stipulations:

1. Minnesota DOT DBE Certification – DBE Certification by the Minnesota DOT which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the Minnesota DOT.
2. Minnesota DOT Small Business Enterprise (SBE) – Will require submittal of three years of business tax returns and page 2 of the Minnesota DOT DBE Certification application after contract award.
3. SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124) - will require submittal of three years of business tax returns.

Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

D. Implementation Schedule

The City will implement this small business element within nine months of the FAA's approval of this document describing the element.

E. Assurances

The City makes the following assurances:

1. The DBE Program, including its small business element is not prohibited by state law;
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program;
3. There are no geographic or local preferences or limitations imposed on FAA-assisted contracts and the DBE Program is open to small businesses regardless of their location;
4. There are no limits on the number of contracts awarded to firms participating in the DBE Program;
5. Reasonable effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
6. Aggressive steps will be taken to encourage those minority and women owned firms participating in the small business element of the DBE Program that are eligible for DBE certification to become certified.