

CITY COUNCIL PROCEEDINGS

May 11, 2016

The City Council of the City of David City, Nebraska, met in open public session in the meeting room of the City Office, 557 N 4th Street, David City, Nebraska. The Public had been advised of the meeting by publication of notice in The Banner Press on May 5th, and an affidavit of the publisher is on file in the office of the City Clerk. The Mayor and members of the City Council acknowledged advance notice of the meeting by signing the Agenda which is a part of these minutes. The advance notice to the Public, Mayor, and Council members conveyed the availability of the agenda, which was kept continuously current in the office of the City Clerk and was available for public inspection during regular office hours. No new items were added to the agenda during the twenty-four hours immediately prior to the opening of the Council meeting.

Present for the meeting were: Mayor Alan Zavodny, Council President Gary Kroesing, Council members Gary Smith, Tom Kobus, John Vandenberg, Mike Rogers, and Kevin Hotovy, City Attorney James Egr, and City Clerk/ Interim City Administrator Joan Kovar.

Also present for the meeting were: Matt Rief and Craig Reinsch of Olsson Associates, Larry Sabata, Jesus Zaragoza, Jim Vandenberg, Janis Cameron, Skip Trowbridge, Banner Press Editor Larry Peirce, and Sewer Supervisor Kevin Betzen.

The meeting opened with the Pledge of Allegiance.

Mayor Zavodny informed the public of the "Open Meetings Act" posted on the east wall of the meeting room and asked those present to please silence their cell phones.

The minutes of the April 13th, 2016 meeting of the Mayor and City Council were approved upon a motion by Council member Vandenberg and seconded by Council member Smith. Voting AYE: Council members Kroesing, Hotovy, Kobus, Rogers, Vandenberg, and Smith. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to go into executive session to discuss potential litigation strategy. Council member Smith seconded the motion. Voting AYE: Council members Kroesing, Vandenberg, Kobus, Rogers, Smith, and Hotovy. Voting NAY: None. The motion carried.

Mayor Zavodny stated, "At 7:02 p.m. we are going into executive session to discuss potential litigation strategy." Mayor Zavodny, Council members Kroesing, Smith, Vandenberg, Hotovy, Kobus, and Rogers, City Attorney Egr, and City Clerk Kovar went into executive session at 7:02 p.m. At 7:06 p.m. Sewer Supervisor Kevin Betzen was asked to join the executive session.

City Attorney Jim Egr stated that a motion and second was not needed to come out of executive session. Therefore, Mayor Zavodny declared the City Council out of executive session at 7:44 p.m.

Mayor Zavodny asked for consideration of claims. Council member Smith made a motion to authorize the payment of claims and to pay Yong Construction in the amount of \$35,802.00. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Kroesing, Vandenberg, Rogers, Kobus, and Smith. Voting NAY: None. The motion carried.

Mayor Zavodny asked for any comments or questions concerning the Committee and Officer Reports. Mayor Zavodny reported that the City received a letter from David City High School saying how well our departments did their job on the recent water main break by the school. DCHS appreciated their quick response time in correcting the problem.

Council member Rogers made a motion to accept the committee and officers reports as presented. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Kroesing, Vandenberg, Rogers, Hotovy, and Smith. Voting NAY: None. The motion carried.

Consideration of the Zoning Permit Application by David City Public Schools for off street parking spaces had been discussed at the April 27, 2016 Committee of the Whole Meeting. Council member Kroesing felt that diagonal parking might be a better alternative. On April 28, 2016, City Clerk Joan Kovar sent the following e-mail to Superintendent of Schools Chad Denker:

On Thu, Apr 28, 2016 at 11:45 AM, Joan Kovar <jkovar@davidcityne.com> wrote:

Chad,

The City Council discussed the request for parking spaces on the north side of the pre-school as you requested.

The Council felt that parking on both sides of the street may cause more accidents with people backing straight out. The Council questioned if you would be willing to make the parking on the south side of "D" Street "diagonal" parking. This may reduce the parking spaces by one but felt it would be a safer alternative. They also realize that the traffic would then need to be coming from the west to utilize the parking. Please give this some consideration.

Superintendent of Schools Chad Denker replied:

We have talked about doing that and also considered doing that on the north side of the high school as well. If the city would prefer angled parking we can certainly do that. I will not be able to attend the Wed May 11 city council mtg because our school board mtg is that same night. If you need more info ahead of time, I would be glad to get it for you.

Council member Kroesing stated: "They offered to go that way on the north side of the street also and I think we should take them up on it." Discussion followed.

Council member Kroesing made a motion to allow "diagonal" off-street parking on the south side of "D" Street between 7th Street and the alley to the east as requested by the David City Public Schools, and to tell D.C.H.S. that we would prefer that they would change the existing "straight" off-street parking on the north side of "D" Street to diagonal also. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Vandenberg, Rogers, Hotovy, Smith, and Kroesing. Voting NAY: None. The motion carried.

Council member Hotovy made a motion to adopt the Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation as a condition of receiving Federal Financial Assistance for the Municipal Airport. Council member Vandenberg seconded the motion. Voting AYE: Council members Rogers, Kroesing, Smith, Kobus, Vandenberg, and Hotovy. Voting NAY: None. The motion carried.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
David City Municipal Airport
David City, Nebraska

POLICY STATEMENT

1. Definitions of Terms (26.5)

The City of David City, Nebraska is hereinafter referred to as Sponsor. The terms used in this program have been adopted by the Sponsor and have the meanings as defined in 49 CFR 26.5.

2. Objectives /Policy Statement (26.1, 26.23)

The Sponsor 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 Sponsor has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Sponsor has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Sponsor 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; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Joan Kovar, City Administrator, City of David City, Nebraska has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer 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 Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor has disseminated this policy statement to the governing board of the airport and all 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. Distribution is included in the bid specification.

Mayor 

Date: 5-11-2016

SUBPART A – GENERAL REQUIREMENTS

- 1. Objective (26.1).** The objectives are found in the policy statement on page 1 of this program.
- 2. Applicability (26.3).** The Sponsor is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*
- 3. Definitions (26.5).** The definitions are found in the policy statement on page 1 of this program.
- 4. Nondiscrimination Requirements (26.7).** The Sponsor 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 Sponsor 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.

5. Record Keeping Requirements (26.11).

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT by submitting annually through the "Uniform Report of DBE Awards or Commitments and Payments form, found in Appendix B to Part 26. We will also report the DBE Contractor firms contact information.

Bidders List: 26.11(c)

The Nebraska Department of Aeronautics, acting as agent for the Sponsor, will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement may allow use of the bidder's list approach to calculate overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information by requesting that prime bidders report the names and addresses of all firms who quote to them on subcontracts. We will collect this information using forms included in Appendix E.

6. Federal Financial Assistance Agreement. The Sponsor has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

Assurance (26.13a)

The Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Sponsor 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)

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The 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.

END - SUBPART A

SUBPART B – ADMINISTRATIVE REQUIREMENTS

1. DBE Program Updates (26.21). The Sponsor will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry 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 approval.

The Sponsor 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.

2. Policy Statement (26.23). The policy statement is elaborated on the first page of this program.

3. DBE Liaison Officer (DBELO) (26.25). We have designated the following individual as our DBE Liaison Officer:

Name: Joan Kovar, City Administrator
Address: P.O. Box 191
City: David City, Nebraska 68632-0191
Telephone: 402-367-3135

In that capacity, the DBE Liaison Officer (DBELO) is responsible for implementing all aspects of the DBE program and ensuring that the Sponsor complies with all provisions of 49 CFR Part 26. The Liaison Officer is the City Administrator, and has direct, independent access to the airport's governing board concerning DBE program matters. The Sponsor does not have a dedicated civil rights department. The Sponsor uses the Nebraska Department of Aeronautics and the Nebraska Department of Roads civil rights staff for guidance on matters concerning the DBE program. An organization chart displaying the DBELO's position in the organization is found in Appendix A to this program.

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

- a) Gathers and reports statistical data and other information as required by DOT.
- b) Works with others to set overall annual goals.
- c) Ensures that bid notices and requests for proposals are available to DBE's in a timely manner.
- d) Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- e) Analyzes the Sponsor's progress toward goal attainment and identifies ways to improve progress.
- f) Participates in pre-bid meetings.
- g) Determine contractor compliance with good faith efforts.
- h) Advises the governing body on DBE matters and achievement.
- i) Plans and participates in DBE training seminars.
- j) Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
- k) Acts or will act as liaison to the Uniform Certification Process in Nebraska.
- l) Maintains the Sponsor's updated directory on certified DBEs as published by the Nebraska Department of Roads.

4. DBE Financial Institutions (26.27). It is the policy of the Sponsor 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.

There are four (4) banks in David City: First National Bank, US Bank, Union Bank, and Bank of the Valley. Each of these banks was contacted and none are owned and controlled by socially and economically disadvantaged individuals. In addition, three statewide organizations were contacted and asked to identify institutions owned and controlled by socially and economically disadvantaged individuals in Nebraska: the Nebraska Department of Banking & Finance, the Nebraska Bankers Association, and the Nebraska Department of Roads Minority Business Coordinator. Again, no such institutions were identified. The Sponsor will continue to search for institutions of this type within their geographical area. Information on the availability of such institutions will be available from the DBE Liaison Officer.

According to Part 26.27, the Sponsor is required to "thoroughly investigate ... financial institutions ... in your community." David City is a city with a population of less than 10,000. It is located in an area with no suburbs. The city of David City constitutes the Sponsor's community. The Sponsor has investigated all financial institutions within their community and thus met the requirements of Part 26.27.

The Sponsor's community under 26.27 and the Sponsor's market area under 26.45 are not the same areas. Due to the area's low population density, contractors typically travel hundreds of miles to participate on DOT-assisted contracts. Therefore, the Sponsor's market area that was used to establish their overall DBE goal is discussed in Appendix B. It would be impractical, infeasible and unreasonable for the Sponsor to use a financial institution outside of their community.

5. Required Contract Clauses (26.13b, 26.29)

Prompt Payment: We will include the following clauses in each DOT-assisted prime contract:

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

(b) In the event of noncompliance with this provision, the Sponsor may impose appropriate penalties in accordance with terms and conditions of this contract.

(c) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor has paid for work performed by such subcontractors in accordance with this provision and contract terms.

6. Directory (26.31). The Sponsor maintains a directory prepared and furnished by the Nebraska Department of Roads (NDOR) identifying all firms eligible to participate as DBEs. The NDOR directory is prepared using the standards and procedures conforming to 49 CFR Part 26. The directory is available from the Minority Business Coordinator, Nebraska Department of Roads, P.O. Box 94759, Lincoln, NE 68509-4759. It is available on the Internet at:

www.dor.state.ne.us/letting/certified-dbes.htm

The directory lists firms that have passed NDOR's certification process. The listing includes the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE. NDOR updates the directory at least quarterly.

7. Overconcentration and Business Development Programs (26.33) (26.35). The sponsor has not identified overconcentration of DBEs in any field of work and has not implemented a Business Development Program.

8. Business Development Programs (26.35). We have not established a business development program.

9. Monitoring and Enforcement Mechanisms (26.37). 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 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

The Sponsor will provide a monitoring and enforcement mechanism to verify that the work committed to DBE's at the contract award is performed by the DBE's. This will be accomplished by the Sponsor entering into an agreement for construction observation services, which will include reviewing compliance with Labor and Civil Rights provisions in accordance with FAA AIP Sponsor Guide No. 1070 and keeping a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

In the event of non-compliance with the DBE regulation by a participant in our procurement activities, the Sponsor has available several remedies to enforce the DBE requirements contained in its contract, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
 - 3-504. city airport authority
 - 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

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

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

END - SUBPART B

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. Quotas (26.43). We do not use quotas in any way in the administration of this DBE program.

2. Overall Goals (26.45)

The Sponsor's methodology to calculate the overall goal and goal calculations are attached as Appendix B and described below. This section of the program will be updated annually for each year that DOT-assisted contracts are let.

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

We consulted with the Nebraska Department of Aeronautics to establish the geographical area from which we could reasonably expect ready, willing and able prime contractors and subcontractors to be obtained. After identifying the geographical area, we search the US Census Bureau's data base to obtain the total number of businesses that correspond to the NAICS code related to the prime scope of work for the project. We review the Nebraska Department of Roads (NDOR) data base to identify the number of certified DBE's in the geographical area with work codes similar to the NAICS codes.

"Step 1" of the process (Section 26.45(c)) is base figure determination. The base figure was determined by dividing the number of DBE firms on this list by the total number of firms. See Appendix B, Step 1: Goal Setting Process for details.

"Step 2" of the process (Section 26.45(d)) allows for adjustments to the base figure. We have been unable to find evidence of past discrimination and have not identified any barriers in our local market area research. In addition, the Nebraska Department of Roads (NDOR) is not aware of past discrimination and has not identified any barriers in our local market area

research to adjust their base figure for over utilization or under utilization to warrant adjustments to their base figure. Therefore, we have not adjusted our base figure due to discrimination.

In addition, our past history of DBE participation (See Appendix B) will be considered and may be used to adjust the base figure if applicable. Information on our history will be updated for each year that DOT-assisted contracts are let.

Process: Before establishing the overall goal each year, the Sponsor will consult with the Nebraska Departments of Aeronautics and Roads to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs. The Sponsor may also consult with United Minority Contractors Association of Nebraska and the Urban League of Nebraska to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs.

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

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

The Sponsor will establish its overall goal based on one or more projects. Our overall goal will be submitted to FAA at least 30 days prior to the first solicitation for a DOT-assisted contract for a project that contains a goal, including professional services, construction, or other contracts. Unless we have received other instructions from DOT, we will establish a goal on a project basis and begin using our overall goal by the time of the first solicitation for a contract that contains a goal.

3. Vehicle Manufacturers or Specialized Equipment Goals (26.49)

The Sponsor will establish project-specific goals for DBE participation in the procurement of vehicles and specialized airport equipment. The project-specific goal will be submitted to the Federal Aviation Administration for approval prior to procurement.

4. Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51 a-c)

The Sponsor's breakout of Race-Neutral and Race-Conscious participation and details on the calculation are attached in Appendix B. The breakout participation will be updated annually for each year that DOT-assisted contracts are let.

The Sponsor will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Sponsor uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations in ways that facilitate DBE, and other small business, participation.
2. Ensuring that DBEs are notified on DOT-assisted contract lettings. This is accomplished through a mailing prepared by the Nebraska Department of Aeronautics.
3. Ensuring distribution of the DBE directory to potential prime contractors.

The historical data included in Appendix B summarizes the race-neutral and race-conscious DBE participation. The historical data will continually be evaluated and used to provide base line data for DOT-assisted contracts.

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

5. Contract Goals (26.51) The Sponsor will use contract goals to meet any portion of the overall goal that the Sponsor does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

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

6. Good Faith Efforts (26.53)

Demonstration of good faith efforts (26.53a & 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 49 CFR Part 26, which are included in Appendix H of this document.

The DBE Liaison Officer (identified on page 3) 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.

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 (26.53b)

The Sponsor treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within five (5) days of the bid opening:

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 participation;
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 contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration

Within three days of being informed by the Sponsor that it is not responsive 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 James Egr, Attorney, City of David City, Nebraska 68632-0191. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make 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. 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 (26.53f)

We 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 Sponsor 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/offers, including those who qualify as a DBE. A DBE contract goal is established for this contract and is included in the bid documents. The bidders/offers shall make good faith efforts, as defined in Appendix A of 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offer 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 participate; (4) written documentation of the bidder/offer's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it will participate 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 will be requested.

7. Counting DBE Participation (26.55). 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.

END - SUBPART C

SUBPART D – CERTIFICATION STANDARDS

1. Certification Process With Unified Certification Program. (26.61 - 26.91) A Nebraska Unified Certification Program (NUCP) agreement has been approved by the U.S. Department of Transportation. The NUCP consists of other recipients of DOT financial assistance including the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and the Federal Transit Authority (FTA). The Nebraska Department of Aeronautics is the Sponsor's representative on the NUCP.

Process

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

Minority Business Coordinator, Nebraska Department of Roads
P.O. Box 94759, Lincoln, NE 68509-4759.

Our certification application forms and documentation requirements are found in Appendix D to this program

END - SUBPART D

SUBPART E – CERTIFICATION PROCEDURES

1. Unified Certification Programs. (26.81). The sponsor accepts the certification procedures adopted by the NUCP for DBE contractors. The NUCP uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. If a contractor is certified on NUCP's current list, that contractor will be acceptable to the sponsor.

2. Procedures for Certification Decisions. (26.83).

Recertifications

The NUCP is responsible for all recertifications. The NUCP reviews the eligibility of DBE's to make sure that they will meet the standards of Subpart E of Part 26. The NUCP completes this review no later than three years from the most recent certification date of each firm.

For firms that have been certified or reviewed and found eligible under Part 26, the NUCP will review their eligibility at least every ten years. The components of these reviews will be determined on a case-by-case basis.

"No Change" Affidavits and Notices of Change

The NUCP requires all DBEs to inform them with a sworn and notarized affidavit affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership or control eligibility requirements of 49 CFR Part 26 or of any material changes in the information provided with the DBE's application for certification, except for changes of which the firm has already informed the Office. The disadvantaged owners of the DBE firms are also required to provide a Personal Financial Statement and copies of their most recent personal and company Federal Income Tax Returns.

3. Denials of Initial Requests for Certification (26.85).

The NDOR decisions to deny a firm DBE certification are administratively final on the day of the decision. There are no provisions for appeal of a decision to deny DBE certification to NDOR. A firm denied DBE certification by NDOR may make a formal appeal of the decision to DOT.

4. Removal of DBE's Eligibility (26.87).

In the event it is proposed to remove a DBE's certification, an investigation or audit by NDOR DBE Office will be conducted. If the results reveal undisclosed or erroneous information which affects a firm's DBE eligibility status, the firm will be notified in writing by certified mail. The notice will cite the undisclosed or erroneous information, and the firm will be given 15 days from the date of the notice to respond in writing. The response must contain information sufficient to permit an evaluation of eligibility.

The DBE Office will investigate and evaluate all available information. If the firm's eligibility status remains in question; the Office will present their recommendation to an appointed Committee. The Committee will then evaluate the available information and make a determination.

If the determination is that the firm should be decertified, the DBE Office will send the firm and Intent to Decertify Letter within five (5) days of the determination stating the reasons(s) for the determination.

After a firm is notified of the Intent to Decertify, the firm has the opportunity to request an informal hearing. A request for a hearing must be made within 15 days of the date of the intent to Decertify Letter. If no timely request for a hearing is made, the DBE firm's certification will be revoked the day the decision is administratively final on the 16th day after the letter.

5. Certification Appeals (26.89).

Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Program Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754

FAX: 202-366-5575

A firm will remain eligible as a DBE during the pendency of the proceedings to remove its eligibility and until the date of the issuance of the notice.

We will promptly implement any DOT certification appeal decisions affecting the eligibility of the DBEs.

END - SUBPART E

SUBPART F – COMPLIANCE AND ENFORCEMENT

1. Information, Compliance, Cooperation (26.109).

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 Sponsor or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will keep a tally of actual payments to DBE firms for work committed to them at the time of contract award. We will require prime contractors to submit information on actual payments made to DBE subcontractors. We will require DBE subcontractors to certify that they have received these payments. If there is a discrepancy in the prime and subcontractor reports, we will perform audits of contract payments to DBEs. The purpose of the audits will be to 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 participations.

END - SUBPART F

SUBPART G – FOSTERING SMALL BUSINESS PARTICIPATION

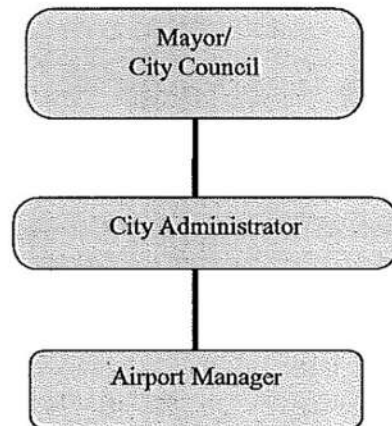
See Appendix C

END - SUBPART G

ATTACHMENTS

Appendix A	Organizational Chart
Appendix B	DBE Goal Methodology
Appendix C	Fostering Small Business
Appendix D	Regulations, State Directory, Certification Application & Unified Certification Program
Appendix E	Bidder's List Collection Form
Appendix F	DBE Monitoring and Enforcement Mechanisms
Appendix G	Demonstration of Good Faith Efforts
Appendix H	49 CFR Part 26, Appendix A

Appendix A Organizational Chart



Joan Kovar, City Administrator, is the designated Liaison Officer. Thus, Ms. Kovar has frequent direct and independent access to the Mayor/City Council and Airport Manager.

Appendix B DBE Goal Methodology For FY 2016, 2017, 2018

Airport: David City Municipal Airport, David City, Nebraska
Sponsor: City of David City, Nebraska

Goal Period: Fiscal Years (FY) 2016, 2017, 2018; October 1, 2015 through September 30, 2018

Anticipated DOT-Assisted Contracts:

	Contract Amount	Project Name	Type of Work
FY2016:	\$0	No Projects	N/A
Subtotal FY2016	\$0		
FY2017:	\$350,000	Seal Coat & Pavement Maintenance	Pavement Rehab
Subtotal FY2017	\$350,000		
FY2018:	\$0	No Projects	N/A
Subtotal FY2018	\$0		
Total:	\$350,000		

The Sponsor's overall 3-year DBE goal is: 4.25%

On DOT assisted contracts, the goal is to expend 4.25% of the Federal financial assistance on DBE's. It is anticipated that our overall DBE goal will be achieved through 0% race-neutral participation and 4.25% being achieved through race-conscious participation.

Total amount to be expended on DBE's: \$14,878

The following is a summary of our DBE expenditures for each fiscal year by contract:

Fiscal Year	Contract Type	Contract Amount	DBE Amount	Total DBE Participation	Race Neutral	Race Conscious
2016	No Projects	\$0	\$0	0%	0%	0%
2017	Consultant/Eng. Services -- Pavement Rehab	\$75,000	\$0	0%	0%	0%
2017	Construction -- Pavement Rehab	\$275,000	\$14,878	5.41%	0%	5.41%
2018	No Projects	\$0	\$0	0%	0%	0%
FY16, 17 & 18 TOTALS		\$350,000	\$14,878	4.25%	0%	4.25%

Step 1: Goal Setting Process (26.45 c)

The goal was calculated using the method described in our DBE program. We selected the following geographical areas (counties) that will be used to seek contractors for the projects during the various years. The specific geographical areas were selected based on information from Nebraska Department of Aeronautics. Specifically, we selected those contractors within the following Counties for the projects for the various years:

FY2016
No Projects
(i.e., No contractors needed)

FY2017
Cedar, Dixon, Dakota, Pierce,
Wayne, Thurston, Madison,
Stanton, Cumming, Burt,
Colfax, Dodge, Washington,
Douglas, Sarpy, Butler,
Saunders, Lancaster, Gage,
Johnson, Pawnee, Knox, Antelope,
Pierce, Boone, Platte, Nance,
Merrick, Hamilton, Polk,
York, Seward, Saline, Fillmore,
Thayer, Jefferson, Boyd,
Holt, Garfield, Wheeler,
Greeley, Sherman, Howard,
Buffalo, Hall, Clay, Adams,
Kearney, Nuckolls, Franklin,

FY2018
No Projects
(i.e., No contractors needed)

In addition to construction contracts, we anticipate contracts for consulting/engineering services. In establishing DBE participation by DBE consulting/engineering firms, we were unable to locate certified DBE's that provide consulting/engineering services. Based on our past experience and information from the Nebraska Department of Aeronautics, we anticipate 4 to 6 consulting/engineering firms submitting qualification packets for providing services at our airport. It should be noted that our engineering selection will be a qualification based selection and we do not anticipate DBE consulting/engineering firms submitting qualifications during the selection process. Therefore, during this 3-year period, we anticipate no DBE participation on consulting/engineering services contracts. We will continually review/evaluate DBE participation by consulting/engineering firms and update as necessary.

FY2016

We are anticipating no projects or federal grants during FY2016; therefore, our DBE participation is zero (0).

FY2016 No Projects
(0 DBE Firms/ 0 total firms) = 0% DBE Participation
0% x \$0 Contract Amount = \$0 DBE Participation

FY2016 Overall DBE Goal
\$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2016

FY2017

We anticipate one contract for consulting/engineering services in the total amount of \$75,000 and we anticipate no DBE participation on consulting/engineering services contracts, as previously discussed. The DBE participation for consulting/engineering service contracts is calculated as follows:

FY2017 Engineering Services Contract Goal – Pavement Rehab
(0 DBE Firms/ 6 total firms) = 0% DBE Participation for Consulting/Engineering Services
0% x \$75,000 Contract Amount = \$0 DBE Participation for Consulting/Engineering Services

We anticipate a prime contract for the major work item that involves pavement rehabilitation. We identified 82 firms in our selected geographical area from the US Census Bureau that included NACIS codes 23731-Highways, Streets, and Bridge Construction. In addition, we identified 5 certified DBE's in our selected geographical area with NDOR categories D12-Traffic Control, and D13 Pavement Patching. The DBE participation for this contract is calculated as follows:

FY2017 Construction Contract Goal – Pavement Rehab
(5 DBE Firms/ 82 total firms) = 6.10% DBE Participation for Construction Contract
6.10% x \$275,000 Contract Amount = \$16,775 DBE Participation for Consulting/Engineering Services

Based on the above discussions, our overall FY2017 DBE goal is as follows:

FY2017 Overall DBE Goal
\$16,775 Total DBE Participation / \$350,000 Total Contract Amount = 4.79% DBE Participation for FY2017

FY2018

We are anticipating no projects or federal grants during FY2018; therefore, our DBE participation is zero (0).

FY2018 No Projects
 (0 DBE Firms/ 0 total firms) = 0% DBE Participation
 0% x \$0 Contract Amount = \$0 DBE Participation

FY2018 Overall DBE Goal
 \$0 Total DBE Participation / \$0 Total Contract Amount = 0% DBE Participation for FY2018

The following is summary of our anticipated work with DBE participation by fiscal year:

Summary of FY2016, 2017 and 2018 DBE Participation

The following is a summary of our anticipated work with DBE participation by fiscal year:

<u>Fiscal Year</u>	<u>Contract Type</u>	<u>Contract Amount</u>	<u>DBE Amount</u>
2016	No Contracts	\$0	\$0
2017	Consulting/Eng. Services – Pavement Rehab	\$75,000	\$0
2017	Construction - Pavement Rehab	\$275,000	\$16,775
2018	No Contracts	\$0	\$0
TOTALS		\$350,000	\$16,775

The calculation for our 3-year base figure is as follows:

$$(\$16,775 \text{ Total DBE Contact Amount}) / (\$350,000 \text{ Total Contract Amount}) = 4.79\%$$

Step 2: Adjustments to Base Figure (26.45(d))

Our historical data is summarized as follows:

<u>FY</u>	<u>AIP Project</u>	<u>Description of Work</u>	<u>CONTRACT GOAL</u>		<u>CONTRACT ACHIEVE</u>		<u>GOAL</u>		<u>ACHEIVE</u>
			<u>Race Neutral</u>	<u>Race Conc.</u>	<u>Race Neutral</u>	<u>Race Conc.</u>	<u>Overall Goal</u>	<u>Overall Achieve</u>	<u>Over/Under Achievement</u>
03	01	Airport Layout Plan	*	*	0%	0%	*	0%	0%
03	02	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%
07	03	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%
08	04	Pavement Rehab – Design	0%	0%	0%	0%	0%	0%	0%
08	05	Land Reimbursement	0%	0%	0%	0%	0%	0%	0%
09	06	Pavement Rehab – Construction	0%	5.8%	0%	5.8%	5.8%	5.05%	-0.75%
10	07	PAPI, Beacon, Wind Cone	0%	0%	0%	0%	0%	0%	0%
11	08	Snow Removal Equip, Bldg	0%	3.9%	0%	3.4%	3.9%	3.4%	-0.5%
11	09	Snow Removal Equipment	0%	0%	0%	0%	0%	0%	0%
15	10	Pavement Rehab	0%	4.54%	88.41%	4.54%	3.41%	81.77%	+78.36%

* Indicates no DBE records available

Based on our history over the past 10 years (FY06 through FY15), our overall DBE achievements have ranged from 0% to 81.77% with our median DBE achievement percentage being 3.4%. Using our previous 10 year median DBE achievement percentage of 3.4%, we added 3.4% (median) to our previously determined base figure (4.79%) and divided by 2 to obtain an average of 4.10%. Therefore, we intend to use 4.10% (average) as our adjusted overall goal based on historical data. We feel this adjusted overall goal will accurately reflect our anticipated achievement for FY16, FY17 and FY18.

Base Figure Adjusted for Historical Data = 4.10% (0.69% decrease of base figure)

FY2016 Contract Goals With Historical Data Adjustment

Based on the above discussions (i.e., Goal Setting Process and Historical Adjustment), we will not apply the historical data adjustment to FY2016 because we do not anticipate having any contracts during this fiscal year.

FY2017 Contract Goals With Historical Data Adjustment

Based on the above discussions, our overall adjusted FY2017 DBE goal is as follows:

**FY2017 Consulting/Engineering Services – Contract Goal
 With Historical Data Adjustment**

Original DBE Participation for Engineering Services Construction Observation = 0%
 DBE Participation for Engineering Services Construction Observation With Historical Data Adjustment= 0%
 0% x \$75,000 Contract Amount = \$0 DBE Participation for Engineering Services

FY2017 Construction Contract Goal With Historical Data Adjustment

Original DBE Participation for Construction Contract = 6.10%
 DBE Participation for Construction Contract With Historical Data Adjustment= 5.41%
 5.41% x \$275,000 Contract Amount = \$14,878 DBE Participation for Construction Contract

**FY2017 Overall DBE Goal
 With Historical Data Adjustment**

\$14,878 Total DBE Participation / \$350,000 Total Contract Amount = 4.25% DBE Participation for FY2017

FY2018 Contract Goals With Historical Data Adjustment

Based on the above discussions (i.e., Goal Setting Process and Historical Adjustment), we will not apply the historical data adjustment to FY2018 because we do not anticipate having any contracts during this fiscal year.

Summary of FY2016, 2017 and 2018 DBE Participation With Historical Adjustment

The following is a summary of our anticipated work with DBE participation, which includes historical adjustments, by fiscal year:

<u>Fiscal Year</u>	<u>Contract Type</u>	<u>Contract Amount</u>	<u>DBE Amount</u>
2016	No Contracts	\$0	\$0
2017	Consulting/Eng. Services – Pavement Rehab	\$75,000	\$0
2017	Construction - Pavement Rehab	\$275,000	\$14,878
2018	No Contracts	\$0	\$0
TOTALS		\$350,000	\$14,878

The calculation for our 3-year base figure is as follows:

$$(\$14,878 \text{ Total DBE Contract Amount}) / (\$350,000 \text{ Total Contract Amount}) = 4.25\%$$

Step 3: Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51 a-c)

We estimate that, in meeting our overall goal of 4.25% (Base Figure with Historical Data Adjustment), we will obtain 0% from race-neutral participation and 4.25% from race-conscious measures. The race-neutral and race-conscious participation is based on the historical data that indicates our accomplishments have not exceeded our goal by a median difference of 0%). The median difference (0%) is evidence of no neutral participation

Appendix C

Fostering Small Business Participation

A. Objective (49 CFR Part 26.39)

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, the Sponsor will meet its objectives using a combination of the following methods and strategies:

1. **Set asides:** Where feasible, the Sponsor 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 Sponsor 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 manager 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 manager and small business officer will document why a small business set-aside is inappropriate.
2. **Unbundling:** 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.

However, based on data from the Nebraska Department of Roads (NDOR), current procedures utilized to structure contracting requirements not only facilitate competition by small business concerns, but have enabled small business concerns to be very successful in securing work both as prime contractors and subcontractors. Because of the high level of success small businesses have had in competing for and performing prime contracts, the sponsor does not feel it is necessary at this time to alter or restructure its contracting requirements in order to foster small business participation.

It has been determined that contractors (primes and sub) doing airport projects in Nebraska are included in NDOR contractor lists. The Nebraska Department of Aeronautics (NDA) and airport sponsors will continue to monitor DBE and small business participation.

The sponsor, NDA and NDOR will continue to ensure that prime contracts are available for small businesses. The assessment will be conducted by personnel from the NDOR. If an assessment shows that the level of participation by small businesses has decreased significantly, the sponsor and NDOR will promptly take all reasonable steps to increase the level of participation.

NDOR currently requires all firms (prime and subcontractors) that participate on NDOR projects to provide average annual gross receipts information. The NDOR requires firms to indicate if their average annual gross receipts exceed \$22.41 million to better verify that only eligible firms are identified as small businesses.

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 on January 1, 2013

D. Assurances

The Sponsor 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, and;
5. Outreach to 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.

Appendix D

Regulations: 49 CFR Part 26,

The DOT published 49 CFR Part 26 is available at the following website.

<http://www.gpo.gov/fdsys/pkg/CFR-2012-title49-vol1/pdf/CFR-2012-title49-vol1-part26>

State of Nebraska DBE Directory,

A directory of Nebraska DBE's is available at the following website.

<http://www.transportation.nebraska.gov.letting.dbeinfo>

State of Nebraska DBE Certification Application

The DBE Certification Application is available at the following website.

<http://www.transportation.nebraska.gov.letting.dbeinfo>

State of Nebraska DBE Unified Certification Program

The DBE Unified Certification Program is available at the following website.

<http://www.transportation.nebraska.gov.letting.dbeinfo>

Appendix E Bidder's List Collection Form

The following form is to be completed with the executed contract.

LIST OF SUBCONTRACTORS **(To Be Completed With Execution of Contract)**

AIP Project: _____

Airport: _____

Location: _____

The Airport Sponsor is required to submit subcontract information about DBE and non-DBE subcontractors who perform work on their federally-assisted contracts. Therefore the Airport Sponsor requires that the prime contractor submit the following information related to this project. The DBE rules described in the Information to Bidders and Special Provisions must be followed in regards to the firms listed on the DBE Participation Statement.

PROPOSED SUBCONTRACTORS

SUBCONTRACTOR	WORK TO BE PERFORMED	APPROXIMATE DOLLAR VALUE
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____
7. _____	_____	_____
8. _____	_____	_____

SIGNED _____

COMPANY _____

BY _____
(Printed name)

DATE _____

Appendix F

DBE Monitoring and Enforcement Mechanisms

The Sponsor has the following remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract.
- Breach of contract action, pursuant to Nebraska Statute
 - 3-504. city airport authority
 - 3-116, 3-120, 3-125 NDA
- Other sections of Nebraska Statutes that may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provisions of Nebraska Statute 48-601 to 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes 48-1101 through 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes 48-1201 through 48-1277.

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

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 18 USC 101.

Appendix G Demonstration of Good Faith Efforts – Forms 1 & 2

FORM 1: Disadvantaged Business Enterprise (DBE) Utilization

UTILIZATION STATEMENT

Disadvantage Business Enterprise

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

- The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.
- The bidder/offeror, while unable to meet the DBE goal of _____%, hereby commits to a minimum of _____% DBE utilization on this contract and also submits documentation, as an attachment demonstrating good faith efforts (GFE).

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this statement may be made without prior approval from the Civil Right Staff of the Federal Aviation Administration.

 Bidder's/Offeror's Firm Name

 Signature

 Date

DBE UTILIZATION SUMMARY

<u>Percentage</u>	<u>Contract Amount</u>	<u>DBE Amount</u>	<u>Contract</u>
DBE Prime Contractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Subcontractor	\$ _____ x 1.00 =	\$ _____	_____ %
DBE Supplier	\$ _____ x 0.60 =	\$ _____	_____ %
DBE Manufacturer	\$ _____ x 1.00 =	\$ _____	_____ %
Total Amount DBE		\$ _____	_____ %
DBE Goal		\$ _____	_____ %

* If the total proposed DBE participation is less than the established DBE goal, Bidder must provide written documentation of the good faith efforts as required by 49 CFR Part 26.

END FORM 1

FORM 2: Disadvantaged Business Enterprise (DBE) Letter of Intent

LETTER OF INTENT
Disadvantage Business Enterprise

Bidder/Offer

Name of Firm: _____
 Firm Address: _____
 Contact person: Name: _____ Phone: () _____

DBE Firm

Name of DBE Firm: _____
 DBE Firm Address: _____
 DBE contact person: Name: _____ Phone: () _____
 DBE certification Agency: _____ Expiration Date: _____

Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.

Classification: Prime Contractor Subcontractor Joint Venture
 Manufacturer Supplier
 Category of DBE: Native American Hispanic Asian Pacific
 Black Non-Minority Woman Other

Work items to be performed by DBE	Description	Quantity	Total

The bidder/offer is committed to utilizing the above-named firm for the work described above. The estimated participation is as follows:

DBE contract amount: \$ _____ Percent of total contract: _____%

AFFIRMATION

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

BY: _____
 (Signature) (Title)

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

Appendix H

49 CFR Part 26, Appendix A

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may

include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or

exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit 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 to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

Craig Reinsch, Engineer at Olsson Associates, has been working on a Water Main Improvements & Replacement project – OA Project No. 015-3415 for David City. The project is located at five (5) separate locations:

- 1) N. 2nd Street, from “N” to “O” Streets
- 2) Oak Street from “D” to “E” Streets
- 3) N. 5th Street from “F” to “I” Streets
- 4) “B” Street from 11th to 13th Streets
- 5) “C” Street from 13th to 14th Streets, and on 14th from “C” to “D” Streets

This project consists of constructing approximately 630 LF of 6-inch water main and 2,540 LF of 8-inch water main installed by either trenching or trenchless technologies, connecting to existing water mains, bore without casing, horizontal directional drilling, fittings, valves, fire hydrant assemblies, abandonment of existing water mains, new connections to existing services, concrete removal and replacement, and associated incidental items of work.

Craig Reinsch of Olsson Associates stated that four (4) bids were received on May 5th regarding installing or replacing approximately 9 blocks of water main as part of a phased overall distribution system improvement plan. The apparent low bidder for the project was submitted by Obrist and Company, Inc., for a base bid of \$345,513.00 for the unit price work as stated in the bid form. This was below the Engineer’s opinion of probable construction cost of this project of \$420,000 by approximately seventeen percent (17%).

Craig Reinsch of Olsson Associates stated: “Based on our experience with Obrist and Company, they have been deemed a responsible and responsive bidder, so we recommend that the City award the contract to Obrist for the full amount.”

Council member Kroesing stated: “We’re thinking about approving this \$345,513.00 project when we have other things outstanding; what’s the game plan here? I thought we were going to hold off and see what we had out there that needed to be done before we approved this.”

Mayor Zavodny stated: “On the 9 blocks of water main? We had planned on these mains. We have 21-22 miles of water main that if we don’t start addressing the worst parts of the City, and I think this is the 2nd worse after the St. Joseph’s Villa area that we addressed, so it’s just a continuation of last year’s work and now this years.”

Council member Rogers made a motion to accept the bid of Obrist and Company, Inc. in the amount of \$345,513.00 to install or replace approximately 9 blocks of water main. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Hotovy, Vandenberg, Rogers, and Smith. Voting NAY: Council member Kroesing. The motion carried.

**WATER MAIN IMPROVEMENTS & REPLACEMENT
DAVID CITY, NEBRASKA - 2016**

BID TABULATION
5-May-2016 OA #015-3416
1:30 p.m. Page 1 of 1

OLSSON
ASSOCIATES

CONTRACTOR				Obriet and Company Columbus, Nebraska		Myera Construction, Inc. Broken Bow, Nebraska		Robert Woelfer & Sons Const. Wayne, Nebraska		M.E. Collins Wahoo, Nebraska	
Item No.	ITEM	UNIT	QTY.	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
BASE BID: For furnishing all labor, materials, and equip											
for constructing approx 3,200 LF of water distribution											
system replacement in the various parts of the City.											
1	Mobilization/Demobilization/Bonds/Insurance	LS	1	\$7,500.00	\$7,500.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$17,850.00	\$17,850.00
2	Construction Testing	LS	1	\$3,000.00	3,000.00	\$3,000.00	3,000.00	\$3,000.00	3,000.00	\$3,000.00	3,000.00
3	8-inch C900 PVC Water Main	LF	1,100	\$31.00	35,800.00	\$42.00	46,720.00	\$30.00	34,000.00	\$37.00	42,920.00
4	8-inch C900 PVC Water Main	LF	305	\$27.00	8,235.00	\$39.00	11,895.00	\$26.00	8,540.00	\$39.00	10,065.00
5	4-inch C800 PVC Water Main	LF	10	\$20.00	200.00	\$30.00	300.00	\$26.00	260.00	\$49.00	490.00
6	8-inch Water Main Horizontal Directional Drilled or Bored with	LF	1,383	\$53.00	73,299.00	\$45.00	62,235.00	\$50.00	69,150.00	\$59.00	81,597.00
7	6-inch Water Main Horizontal Directional Drilled or Bored with	LF	327	\$48.00	15,696.00	42.00	13,734.00	\$45.00	14,715.00	56.00	18,312.00
8	8-inch Gate Valve w/ Box, MJ	EA	5	\$1,525.00	7,625.00	1,886.00	9,430.00	\$2,400.00	12,000.00	1,619.00	8,095.00
9	6-inch Gate Valve w/ Box, MJ	EA	3	\$1,050.00	3,150.00	1,250.00	3,750.00	\$2,200.00	6,600.00	1,135.00	3,405.00
10	4-inch Gate Valve w/ Box, MJ	EA	6	\$825.00	4,950.00	954.00	5,724.00	\$2,000.00	12,000.00	1,079.00	6,474.00
11	2-inch Service Line	LF	26	\$20.00	500.00	26.00	650.00	\$25.00	625.00	45.00	1,125.00
12	1 1/2-inch Service Line	LF	25	\$19.00	475.00	24.00	600.00	\$22.00	550.00	45.00	1,125.00
13	1-inch Service Line	LF	450	\$18.50	8,325.00	22.00	9,900.00	\$20.00	9,000.00	21.00	9,450.00
14	3/4-inch Service Line	LF	50	\$18.50	925.00	21.00	1,050.00	\$20.00	1,000.00	21.00	1,050.00
15	Bore 3/4-inch Service Line	LF	1,220	\$15.00	18,300.00	22.00	26,840.00	\$25.00	30,500.00	35.00	42,700.00
16	Bore 1-inch Service Line	LF	10	\$18.00	180.00	22.00	220.00	\$30.00	300.00	50.00	500.00
17	Bore 1 1/2-inch Service Line	LF	10	\$19.00	190.00	24.00	240.00	\$32.00	320.00	62.00	620.00
18	Bore 2-inch Service Line	LF	95	\$19.00	1,805.00	26.00	2,470.00	\$36.00	3,420.00	62.00	5,890.00
19	2" Tapping Saddle, Corporation Stop, Curb Stop, and Connec	EA	1	\$1,425.00	1,425.00	1,528.00	1,528.00	\$2,500.00	2,500.00	2,654.00	2,654.00
20	1 1/2" Tapping Saddle, Corporation Stop, Curb Stop, and Connec	EA	1	\$950.00	950.00	1,220.00	1,220.00	\$2,000.00	2,000.00	2,106.00	2,106.00
21	1" Tapping Saddle, Corporation Stop, Curb Stop, and Connec	EA	32	\$875.00	28,000.00	704.00	22,528.00	\$1,750.00	56,000.00	1,462.00	46,784.00
22	3/4" Tapping Saddle, Corporation Stop, Curb Stop, and Connec	EA	5	\$850.00	4,250.00	616.00	3,080.00	\$1,500.00	7,500.00	1,358.00	6,790.00
23	Fire Hydrant Assembly	EA	6	\$3,950.00	23,700.00	4,527.00	27,162.00	\$4,000.00	24,000.00	6,513.00	39,078.00
24	12"x8" Direct Tapping Tee & Valve, MJ w/ Thrust Block	EA	1	\$2,850.00	2,850.00	4,270.00	4,270.00	\$3,000.00	3,000.00	4,786.00	4,786.00
25	8" Direct Tapping Tee & Valve, MJ w/ Thrust Block	EA	1	\$2,800.00	2,800.00	4,192.00	4,192.00	\$2,750.00	2,750.00	4,693.00	4,693.00
26	6"x6" Direct Tapping Tee & Valve, MJ w/ Thrust Block	EA	1	\$2,500.00	2,500.00	3,743.00	3,743.00	\$2,500.00	2,500.00	4,315.00	4,315.00
27	6" Direct Tapping Tee & Valve, MJ w/ Thrust Block	EA	2	\$2,450.00	4,900.00	3,678.00	7,356.00	\$2,250.00	4,500.00	3,850.00	7,700.00
28	4" Direct Tapping Tee & Valve, MJ w/ Thrust Block	EA	2	\$2,400.00	4,800.00	3,409.00	6,818.00	\$2,000.00	4,000.00	3,376.00	6,752.00
29	Abandon Water Main	EA	3	\$1,000.00	3,000.00	1,000.00	3,000.00	\$2,000.00	6,000.00	3,151.00	9,453.00
30	Ductile Iron Fittings, M.J.	LB	3,050	\$9.50	28,975.00	4.80	18,060.00	\$2.00	7,900.00	4.00	15,800.00
31	Wet Cut-In	EA	9	\$575.00	5,175.00	1,000.00	9,000.00	\$2,000.00	18,000.00	1,546.00	13,914.00
32	Connect to Existing Water Main/4" or larger service	EA	6	\$1,500.00	9,000.00	1,000.00	6,000.00	\$2,000.00	12,000.00	1,441.00	8,646.00
33	Remove Existing Fire Hydrant Assembly	EA	6	\$750.00	4,500.00	800.00	4,800.00	\$500.00	3,000.00	625.00	3,150.00
34	Remove Existing 6-inch Valve and Box	EA	1	\$500.00	500.00	500.00	500.00	\$400.00	400.00	210.00	210.00
35	Remove Existing 4-inch Valve and Box	EA	6	\$500.00	3,000.00	500.00	3,000.00	\$300.00	1,800.00	210.00	1,260.00
36	Remove and Salvage Existing Fittings	EA	5	\$500.00	2,500.00	500.00	2,500.00	\$300.00	1,500.00	101.00	505.00
37	Abandon Existing 6-inch Valve and Box	EA	2	\$500.00	1,000.00	100.00	200.00	\$250.00	500.00	210.00	420.00
38	Abandon Existing 4-inch Valve and Box	EA	1	\$500.00	500.00	100.00	100.00	\$250.00	250.00	210.00	210.00
39	Abandon Existing 1 1/2 or 2-inch Valve and Box	EA	2	\$500.00	1,000.00	100.00	200.00	\$200.00	400.00	210.00	420.00
40	Saw Cut, Remove, and Replace Brick Roadway	SY	3.5	\$80.00	280.00	300.00	1,050.00	\$200.00	700.00	144.00	504.00
41	Saw Cut, Remove, and Replace 4" Sidewalk	SF	70	\$65.00	4,550.00	77.00	5,390.00	\$50.00	3,500.00	75.00	5,320.00
42	Saw Cut, Remove, and Replace 6" Driveway	SY	25	\$66.00	1,650.00	80.00	2,000.00	\$60.00	1,500.00	68.00	1,700.00
43	Saw Cut, Remove, and Replace 8" Concrete Pavement	SY	76	\$68.00	5,168.00	92.00	6,992.00	\$70.00	5,320.00	91.00	6,916.00
44	Saw Cut, Remove, and Replace 8" Asphalt Pavement	SY	25	\$65.00	1,625.00	110.00	2,750.00	\$125.00	3,125.00	91.00	2,275.00
45	Saw Cut, Remove, and Replace 6" Asphalt Pavement	SY	25	\$60.00	1,500.00	100.00	2,500.00	\$100.00	2,500.00	81.00	2,025.00
46	Remove and Reset Existing 12" CMP Culvert	LF	45	\$25.00	1,125.00	40.00	1,800.00	\$26.00	1,170.00	26.00	1,170.00
47	Aggregate Roadway Surfacing	TN	25	\$35.00	875.00	24.00	600.00	\$50.00	1,250.00	50.00	1,250.00
48	Seeding and Mulching	LS	1	\$3,000.00	3,000.00	6,450.00	6,450.00	\$4,000.00	4,000.00	17,264.00	17,264.00
49	Erosion Control	LS	1	\$2,000.00	2,000.00	5,500.00	5,500.00	\$2,000.00	2,000.00	10,208.00	10,208.00
TOTAL BASE BID - UNIT PRICE - LUMP SUM:						\$345,613.00		\$385,947.00		\$412,345.00	\$483,024.00
Substantially Complete On or Before:				November 15, 2016		November 15, 2016		November 15, 2016		November 15, 2016	
Complete and Ready for Final Payment On or Before:				December 15, 2016		December 15, 2016		December 15, 2016		December 15, 2016	
Addendas				April 26, 2016		April 26, 2016		April 26, 2016		April 26, 2016	
Bid Guarantee				5% Base Bid		5% Base Bid		5% Base Bid		5% Base Bid	
Remarks:											

Mayor Zavodny opened the Public Hearing at 8:03 p.m. to consider the application of Jesus Zaragoza, d.b.a. El Centenario Mexican Grill for a Class I Liquor License at 412 E Street.

Larry Sabata, owner of the building at 412 E Street, stated that he had 9 people that were interested in renting his building. Larry did a lot of research and stated that Jesus Zaragoza currently owns the Acapulco Mexican Grill, LLC, in Wahoo. Larry and his wife ate there and the food and service was excellent.

Jesus Zaragoza stated that this will be a family restaurant. They will specialize in Mexican food and offer beer and margaritas. The restaurant will be open 7 days per week from 11:00 a.m. to 9:30 p.m. Sunday through Wednesday and 11:00 a.m. to 10:00 p.m. Thursday through Saturday. They have completely new equipment and furnishings.

Mayor Zavodny stated: "Well speaking for myself I think this meets a need we have for places to eat. We have a lot of events that bring people to town, and it puts a lot of pressure on the businesses we have."

There being no other comments to be made, Mayor Zavodny closed the public hearing at 8:08 p.m.

Council member Hotovy made a motion to approve the application for a Class I Liquor License as requested by Jesus Zaragoza d.b.a. El Centenario Mexican Grill at 412 E Street. Council member Rogers seconded the motion. Voting AYE: Council members Vandenberg, Kroesing, Smith, Kobus, Hotovy, and Rogers. Voting NAY: None. The motion carried.

Council member Smith made a motion to approve the Liquor License Manager Application of Mark Sulzle for the Pizza Hut at 1931 N 4th Street. Council member Rogers seconded the motion. Voting AYE: Council members Hotovy, Kobus, Kroesing, Vandenberg, Rogers, and Smith. Voting NAY: None. The motion carried.

Council member Kroesing made a motion to re-appoint Judy Vanis to serve as a Housing Authority Board of Commissioner for another 5 year term – May 2021. Council member Smith seconded the motion. Voting AYE: Council members Vandenberg, Kobus, Hotovy, Rogers, Smith, and Kroesing. Voting NAY: None. The motion carried.

Auditorium Supervisor Bill Buntgen was present and planned to explain the bids received for the Auditorium Renovation Project, however, he left the meeting as he was suddenly experiencing excruciating pain.

On the bids received for the Auditorium renovation project Mayor Zavodny stated: "We need to take out the electrical. I am actually working with a guy who is not bidding on it, who does this kind of thing to get to where all of our electricians are bidding apples to apples. There are some changes we know we need to make. It's not a good idea for instance to turn the lights on at a breaker box, those kinds of things, for safety. So we are going to have them go through with Bill, and I'd probably like to go too, and we're going to have to bid that so we need to take out the electrical piece. The only other piece Bill had mentioned to leave out, and this is again to fulfill our portion of the grant we got, is the toilet stalls because we don't have the labor on those."

Civic and Community Center Financing Fund (CCCCF)
Department of Economic Development

David City Auditorium Projects

Gymnasium Lighting:

T5 Lighting

Samek Electric: \$8,614.20

Woolsey Electric: \$9,512.72

LED Lighting

Samek Electric: \$11,487.62

Woolsey Electric: \$11,192.72

46 Foot candles

48 Foot candles

Samek Electric: \$13,041.30

52 Foot candles

Vandenburg Electric:

Heater Control Panels:

Engineered Controls: \$5,100.00---Upper Level

\$1,795.00---Lower Level

\$3,950.00---Room Heaters Total: \$10,845

Handicap Parking :

West side of Auditorium- Parking lot (concrete)

Oborny Const.: \$21,780.00

Cambell Const.: \$19,500.00

Window Replacement:

Upper level restrooms-curved wall

Sack Lumber: \$6,125.00

Superior Glass: \$5,345.00

David City Auditorium Projects

Door Replacement: Upper level Hall/Restrooms
Sack Lumber: Doors \$6,070.00 Hardware \$5,220.00 Total: \$11,290.00
Superior Glass w/hardware: \$8,723.00

Vanity Tops with sinks: Sack Lumber: \$6,175.00 (not commercial grade)
Zegers Homecenter: \$9,894.00 (commercial grade)

Tile replacement: Zegers Home Center: Floor \$10,460.00 Wall \$9,590.00
Total \$20,050.00

Plumbing: Water cooler, urinals, ADA faucets, ADA supply
Osborn Sales and Service: \$8,296.00

Bathroom Partitions: Superior Glass: \$7,033.00
Zegers Home Center: \$3,310.00 (material only)

Ceiling Tile: Lower level Restrooms
Sack Lumber: \$1,147.00

Council member Kroesing questioned the bids for the Vanity Tops with sinks, as Sack Lumber bid “not commercial grade” and Zegers Home Center bid “commercial grade”. “There’s got to be a problem there isn’t there? That’s not bidding apples to apples.”

Mayor Zavodny said that he agreed with Council member Kroesing.

Council member Vandenberg made the motion to accept the low bids received for the Auditorium Renovation Project as follows:

Heater control panels	Engineered Controls	\$10,845.00
Handicapped parking	Campbell Const.	\$19,500.00
Window replacement	Superior Glass	\$5,345.00
Door replacement	Superior Glass	\$8,723.00
Tile replacement	Zegers Home Center	\$20,050.00
Plumbing	Osborn Sales & Service	\$8,296.00
Ceiling tile	Sack Lumber	\$1,147.00

Council member Kobus seconded the motion. Voting AYE: Council members Kroesing, Rogers, Hotovy, Smith, Kobus, and Vandenberg. Voting NAY: None. The motion carried.

Council member Vandenberg introduced Ordinance No. 1245. Mayor Zavodny read Ordinance No. 1245 by title. Council member Kroesing made a motion to suspend the statutory rule that requires an Ordinance be read on three separate days. Council member Smith seconded the motion. Voting AYE: Council members Hotovy, Kobus, Rogers, Kroesing, Smith, and Vandenberg. Voting NAY: None. The motion carried.

Council member Smith made a motion to pass and adopt Ordinance No. 1245 on the third and final reading. Council member Vandenberg seconded the motion. Voting AYE: Council members Hotovy, Rogers, Kobus, Vandenberg, Smith, and Kroesing. Voting NAY: None. The motion carried and Ordinance No. 1245 was passed on 3rd and final reading as follows:

ORDINANCE NO. 1245

AN ORDINANCE RELATING TO ELECTRIC SERVICE RATES AND MINIMUM CHARGES, TO REPEAL ALL PARTS OF THE CODE, RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; TO PROVIDE WHEN THE ORDINANCE SHALL TAKE EFFECT; AND TO PROVIDE FOR PUBLICATION OF THE ORDINANCE IN PAMPHLET FORM.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA:

Section 1. Any rate that contains a Power Factor Adjustment shall be amended as follows:

Power Factor Adjustment

The rates set forth in this schedule are based on the maintenance by the customer of a power factor of not less than 90% leading or lagging at all times. If the power factor is not corrected within the time allowed, the monthly bill shall be increased by a ratio of 0.90 divided by the actual power factor expressed as a decimal for every month’s billing in which the power factor falls below the 90% ratio.

Section 2. That all rates in Ordinances and Resolutions in conflict herewith are hereby repealed.

Section 5. This ordinance shall be published in pamphlet form and all rates included in this Ordinance shall be effective as of June 1, 2016.

PASSED AND ADOPTED this 11th day of May, 2016

Mayor Alan Zavodny

City Clerk Joan Kovar

Council member Kroesing introduced Resolution No. 5 – 2016 adjusting the fees for service deposits and moved for its passage and adoption. Council member Rogers seconded the motion. Voting AYE: Council members Kobus, Hotovy, Smith, Vandenberg, Rogers, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 5 – 2016 was passed and adopted as follows:

RESOLUTION NO. 5 - 2016

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have authority, by virtue of Chapter 3, Article 3, §3-810, and Chapter 3, Article 2, §3-214 of the Municipal Code of the City of David City, Nebraska, to establish the amounts of service deposits to be charged to customers, and

WHEREAS, it is necessary to adjust the fees for service deposits, and the requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA, that a service deposit for electrical service shall be required of all new subscribers for such services as a guarantee of payment. The amounts of such deposits and the administrative policies governing them shall be established by the City Administrator and approved by the City Council, and shall be on file at the City Office. The funds from deposits shall be invested by the City Treasurer and the income from the investment shall be used for the repair and maintenance of the electrical system.

FURTHERMORE, all service deposit amounts shall be returned after the customer has established twenty-four consecutive months of utility bill payment without having been delinquent in payment.

FURTHERMORE, all non-residential service deposit amounts shall be retained until which time a final bill has been requested and the customer is no longer a non-residential customer. The amount of the deposit may also be reviewed annually to determine whether the amount of the deposit or commercial equivalent is equal to current charges in the billing cycle, and if not, then to adjust the deposit up or down.

CALCULATION OF SERVICE DEPOSIT:

Residential Customer:

All Customers	\$300.00 (Customer must pay at least \$200.00 immediately and then may make arrangements to pay the additional \$100 deposit over a two month period.)
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In the event a customer previously lived in David City, they will still be required to make a deposit when they request service.

If the customer previously left town owing utility bills, then the customer will be required to pay all outstanding bills, plus 14% interest per year on the outstanding amount, and the required deposit will be as follows:

All Customers	\$350.00
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In the event of a divorce, separation, or split of tenants, the original deposit will apply to the property that the deposit was made for, regardless of which party actually made the deposit. If the party moving out relocates in David City, another service deposit will be required for this property.

Commercial Customer:

Transfer of ownership of existing business:
Customer shall make a deposit equal to the average billing for the previous twelve months, with a minimum service deposit of \$100.00.
(Average Billing shall be based on all existing services:
Electric, Water, Sewer, Sales Tax, and any other applicable charges.)

New Commercial Installation:

Customer shall make a service deposit equal to two times the average monthly billing. The estimated KWH for billing shall be calculated by using the required KWH, if known, or if unknown, using a minimum of 15kw multiplied by 200 hours. The monthly average cost per kilowatt hour for commercial class customers shall be used in calculating the actual dollar amount of billing.

Industrial Customer:

Transfer of ownership of existing business:
Customer shall make a service deposit equal to two times the estimated monthly billing. The estimated KWH for billing shall be calculated by using the required KW multiplied by 200 hours. The average cost per kilowatt hour for Industrial Class Customers shall be used in calculating the actual dollar amount of billing.

A service deposit for electrical service shall be considered sufficient to cover water and/or sewer service, also. **If a customer does not use City electric service**, but does have City water service, then a service deposit shall be required. A water service deposit based upon meter size and utilizing two months average billing shall be required.

Service deposits in the following amounts shall be paid for these meter size services:

5/8 x 3/4 meter	\$20.00
3/4" meter	\$25.00
1" meter	\$70.00
1 1/2 " meter	\$150.00
2" meter	\$425.00
3" meter	\$575.00
4" meter	\$600.00

BE IT RESOLVED, that all motions and/or resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this resolution shall be in full force and effect immediately upon its adoption.

PASSED AND APPROVED this 11th day of May, 2016.

Mayor Alan Zavodny

City Clerk Joan E. Kovar

Mayor Zavodny stated: "I had talked to actually a few couples and a few individuals that added up to thirteen (13) people and there wasn't a person who was even remotely interested in serving on a committee to discuss and review the recent salary surveys. So, what I did then is, we've asked Pat Hoefft as an employee willing to do it, John has agreed to do it, and I will do it. We will look at this and of course bring anything we would recommend to you. So that's where we stand. If you're okay with those three (3) people doing the preliminary work and then coming to you, that's what I'm proposing."

Council member Kobus made a motion to approve the Salary Survey Committee as referenced above and Council member Hotovy seconded the motion. Voting AYE: Council members Smith, Vandenberg, Hotovy, Rogers, Kroesing, and Kobus. Voting NAY: None. The motion carried.

Council member Kroesing introduced Resolution No. 6 – 2016 increasing the rental rate fees for mowing and moved for its passage and adoption. Council member Smith seconded the motion. Voting AYE: Council members Kobus, Hotovy, Vandenberg, Rogers, Smith, and Kroesing. Voting NAY: None. The motion carried and Resolution No. 6 – 2016 was passed and adopted as follows:

RESOLUTION NO. 6 – 2016

WHEREAS, the Mayor and City Council of the City of David City, Nebraska, have in the inventory of the City various pieces of equipment, and

WHEREAS, City Staff have occasion to use this equipment to carry out nuisance abatement, grant related activities, and other activities of an unusual manner, and

WHEREAS, the City does assume certain expenses related to abatement of nuisances, maintenance of the public right of ways, and other situations, and

WHEREAS, the consumer charges for labor, vehicles, equipment rentals, etc., for the City of David City/David City Utilities, have not been increased for some time, and,

WHEREAS, the City has determined a need to increase the consumer charges for the Street, Airport, and other City Departments for equipment, labor, truck rentals, etc.

NOW, THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DAVID CITY, NEBRASKA that the following list of charges for the use of City equipment and other City expenses, when said use shall be billed to another party, are hereby adopted. Equipment charges do not include the cost of the operator, mileage, and maintenance, which are additional separate charges.

The following rates will be in effect:

Street Department - Charges

Labor:

Labor\$33.50 / hour
Labor / Overtime\$50.00 / hour

Vehicles:

Pickup Trucks\$20.00 / hour
Pickup Trucks with Snow Plow.....\$25.00 / hour
Pickup Trucks with Salt Spreader.....\$30.00 / hour
Pickup Trucks with Snow Plow and Salt Spreader\$30.00 / hour
Pickup Trucks with Mosquito Mister\$75.00 / hour
(Plus chemical costs)
Dump Trucks Single Axle.....\$35.00 / hour
Dump Trucks Single Axle with Snow Plow\$40.00 / hour
Dump Trucks Twin Axle\$50.00 / hour
Dump Trucks Twin Axle with Snow Plow.....\$55.00 / hour
All other vehicles.....\$1.00 / per mile

Equipment:

Caterpillar Loader\$100.00 / hour
Caterpillar Loader with Snow Blower.....\$150.00 / hour
John Deere Motor Grader\$100.00 / hour
Johnson Street Sweeper.....\$150.00 / hour
Riding Mowers\$40.00 / hour
Bobcat with Stump grinder\$85.00 / hour
Bobcat\$35.00 / hour
Bobcat with Jack Hammer\$50.00 / hour
Concrete Saw\$50.00 / hour
Sand Compaction Plate\$30.00 / day

Air Compressor	\$35.00 / hour
John Deere Tractor 3010 (with Mower or Roller).....	\$50.00 / hour
Paint Sprayer	\$50.00 / hour
(Plus per use fee of \$20.00 will be added to the rental)	
Tree Spade	\$50.00 / hour
Trailer Flat Bed	\$30.00 / day

Supplies

Gravel (delivered)	\$13.00 / yard
Gravel (picked up).....	\$11.00 / yard
Sand (delivered).....	\$6.50 / yard
Sand (picked up).....	\$4.50 / yard
Dirt (delivered)	\$6.00 / yard
Dirt (picked up).....	\$5.00 / yard
Dirt Junk.....	\$4.00 / yard
Recycled Re-rock.....	\$21.00 / yard
Cold Patch	\$150.00 / yard
Asphalt Millings	\$10.00 / yard
Downtown Street Brick.....	\$1.00 / each
.....	.25cents / each from pile
.....	50cents / each from pallet
• Lettering for Street Name Signs	\$0.50 / each
• Two inch post caps	\$6.65 / each
• Twenty-four Inch Street Sign Blanks	\$12.00 / each
• When street signs, posts, etc., are damaged by a vehicle or an Accident, there will be a charge for the post, sign, supplies, and labor	
Based on current replacement costs.	

Culverts:

Culvert prices change so rapidly that an exact price cannot be set on a yearly basis. Please contact the Street Department for pricing. The City of David City will charge a \$5.00 administrative fee for each culvert ordered through the Street Department.

David City Municipal Airport:

T-Hangar.....	\$40.00 / month
Shop Hangar.....	\$65.00 / month

All equipment or vehicle rentals are at a minimum of 1 hour rental. An employee of the City of David City shall accompany the rental, and the labor is a separate charge.

Dated this 11th day of May, 2016.

 Mayor Alan Zavodny

ATTEST:

 City Clerk Joan E. Kovar

There being no further business to come before the Council, Council member Smith made a motion to adjourn. Council member Kobus seconded the motion. Voting AYE: Council members Hotovy, Kroesing, Vandenberg, Rogers, Smith, and Kobus. Voting NAY: None. The motion carried and Mayor Zavodny declared the meeting adjourned at 8:45 p.m.



CERTIFICATION OF MINUTES
May 11, 2016

I, Joan Kovar, duly qualified and acting City Clerk for the City of David City, Nebraska, do hereby certify with regard to all proceedings of May 11, 2016; that all of the subjects included in the foregoing proceedings were contained in the agenda for the meeting, kept continually current and available for public inspection at the office of the City Clerk; that such subjects were contained in said agenda for at least twenty-four hours prior to said meeting; that the minutes of the meeting of the City Council of the City of David City, Nebraska, were in written form and available for public inspection within ten working days and prior to the next convened meeting of said body; that all news media requesting notification concerning meetings of said body were provided with advance notification of the time and place of said meeting and the subjects to be discussed at said meeting.

Joan Kovar, City Clerk