

DISADVANTAGED BUSINESS ENTERPRISE PLAN



Adopted on September 7, 1999
Updated January 3, 2005

INTRODUCTION

The Disadvantaged Business Enterprise Plan, of the City of Sioux Falls, was developed in accordance with the following list of federal regulations. The intended use is that of compliance with the requirements and regulations associated with applicable federally assisted activities of the City of Sioux Falls.

Although other procurement activities of the City are not specifically covered under provisions of these citations, it is our intent that disadvantaged business enterprises shall have an equitable opportunity to compete for contracts and subcontracts.

LEGAL CITATIONS

Agency

Regulations

Environmental Protection Agency

40 CFR Part 33

Department of Transportation

49 CFR Part 23

49 CFR Part 26

Housing and Urban Development

24 CFR Part 135

24 CFR Part 570

Office of Federal Contract Compliance Programs

41 CFR Chap 60

Small Business Administration

13 CFR Part 121

13 CFR Part 124

Section 1—Definitions

Affiliation: Has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native: Means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation: (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Certificate of General Eligibility: Means a determination by the State of South Dakota that the applicant qualifies as a Disadvantaged Business Enterprise.

Compliance: Means that a recipient has correctly implemented the requirements of this part.

Contract: Means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor/Vendor: Means one who participates, through a contract or subcontract (at any tier), in an applicable federally assisted project.

U.S. DOT: Means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE: Means a for-profit small business concern . . .

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Discrimination: Means an act or result which subjects a person to different terms and conditions of treatment or limitations and exclusions in participation, because of race, color, sex, national origin, religion, creed or ancestry, handicap, or veteran status as defined in 41 CFR Chapter 60.

U.S. DOT-assisted contract: Means any contract between the City of Sioux Falls, or other recipient and a contractor/vendor (at any tier) funded in whole or in part with U.S. DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Federal Financial Assistance: Means financial assistance provided by a department or agency of the United States, but not a direct contract. The financial aid may be provided directly in the form of actual money or indirectly in the form of:

1. Guarantees authorized by statute as financial assistance.
2. Services of federal personnel.
3. Titles to, or other interest in, real or personal property transferred for less than its fair market value.
4. Any other arrangement through which the City of Sioux Falls benefits financially.

Federally-Assisted Contract: Means this plan, any applicable contract, between the City of Sioux Falls, or their recipient and a contractor/vendor/supplier, which is paid for in whole or in part with federal financial assistance.

FTA: Means the Federal Transit Administration.

Goals (DBE): Means the percentage of any particular applicable project, or an annual overall percentage of all federally assisted contract projects, that the City of Sioux Falls determines can reasonably be performed by disadvantaged business enterprises.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements and/or affirmative action to ensure that disadvantaged business enterprises have the maximum opportunity to participate in federally assisted projects.

Immediate family member: Means a child, a spouse of an individual, a parent, a grandparent, a sibling, or an individual claimed by that individual or by that individual's spouse as a dependent for federal income tax purposes.

Indian tribe: Means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture: Means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge. Also, an association in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Manufacture: Means the production from raw materials of the materials or supplies which are being offered for sale; or the substantial alteration of the structure or substance of an item before offering it for sale.

Materials: Means items furnished for the construction of the contracted project which are put into and become part of the project.

Native Hawaiian means any individual whose ancestors were natives prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization: Means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance: Means the condition existing when a contractor has failed to implement the requirements of this program or any other federal or state regulations pertaining to this plan.

Operating Administration or OA: Means any of the following parts of U.S. DOT—the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Housing and Urban Development (HUD), or any other agency providing federal assistance applicable to this plan. The "Administrator" of an operating administration includes his or her designees.

Owned in Substantial Part: Means an ownership interest of 51 percent or more.

Personal net worth: Means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant DBE firm or the individual's equity in his or her primary place

of residence. An individual's personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse.

Primary Industry Classification: Means the four- or five-digit Standard Industrial Classification (SIC) code or the North American Industrial Classification System (NAICS) which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the NAICS replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient: Means an entity that receives federal financial assistance, directly or indirectly, for a use applicable to this plan and may pass some or all of it on to another recipient.

Principal place of business: Means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program: Means any undertaking on a recipient's part to use federal financial assistance, authorized by the laws to which that assistance applies.

Race-conscious: Means the measure or program is one that is focused specifically on assisting only DBEs.

Race-neutral: Means the measure or program is one that is, or can be, used to assist all small businesses. Race-neutral measures include such activities as training, technical assistance, bonding assistance, business development, breaking contracts into pieces that small business can readily perform prime contract awards to DBEs through regular competitive processes, and also prompt payment provisions. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient: Means any entity, public or private, to which federal financial assistance is extended, whether directly or indirectly through another recipient, applicable to this plan.

Secretary: Means the Secretary of a federal agency such as the Secretary of Transportation, or Secretary of Housing and Urban Development or his/her designee.

Small Business Administration or SBA: Means the United States Small Business Administration.

Small business concern: Means with respect to firms seeking to participate as DBEs in federally assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121,

and part 124) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

Socially and economically disadvantaged: Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is . . .

1. Any individual or entity that a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis as allowed by law.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa.
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong.
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
 - (vi) Women.
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subcontract: Means any agreement between a contractor and a third party whereby the latter agrees to perform a portion of the contractor’s obligation owed to a recipient on a federal financially-assisted project.

Supplies: Means items, other than labor that are consumed in, but do not become a physical part of, a construction project.

Tribally-owned concern: means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Section 2—Purpose, Scope, and General Rules

2.1 Purpose

The purpose of this plan is to provide a single method for complying with the federal requirements for Disadvantaged Business Enterprises (49 CFR Part 26) as they relate to providing goods and/or services within federally assisted contracts. These contract requirements, entered into, or as a part of, or in association with a recipient of applicable federal funds to which this plan applies, are required by the above reference regulation. By way of example and not of limitation, the federal departments and agencies with such Disadvantaged Business Enterprise requirements include:

1. Department of Housing and Urban Development
2. Environmental Protection Agency
3. U. S. Department of Transportation

2.2 Scope

This Disadvantaged Business Enterprise Plan pertains to the applicable federal financial assistance received by the City of Sioux Falls for the purchase of goods, and/or services. This plan also relates to the applicable federal financial assistance associated with a project by a recipient or sub-recipient of the City of Sioux Falls. This plan also applies to DOT-FTA financial assistance related contracts received by the City of Sioux Falls.

1. Exceptions

The following are excluded from this plan:

- A. Construction contracts not covered by statutory bid requirements. This relates to contracts performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands.
- B. Contracts which are solely for the purchase of equipment, supplies, or materials. However, if U.S. DOT financial assistance is received, this exception does not apply.
- C. The purchase of rolling stock (buses).

2.3 General Rules & Assurances (49.26.7)

Nondiscrimination. The City of Sioux Falls will not exclude any person from participation in, or deny any person the benefits, or otherwise discriminate against anyone, in connection with the award and performance of any contract cover by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE plan the City of Sioux Falls 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 plan with respect to individuals of a particular race, color, sex, or national origin.

DBE firms must understand that certification confers a privilege not extended to all firms. This privilege is the right to compete for a position, not the right to have a position. DBE firms must be competitive in their costs, perform work of acceptable quality, and meet project timeliness. DBE certification does not suspend or eliminate any of these requirements. DBE firms are not exempt from any of the regular and normal expectations that the City of Sioux Falls or recipient might have of other contractors, subcontractors, or suppliers.

2.4 The Contract Compliance Specialist: (49 CFR 26.25)

The following individual has been designated as the DBE Liaison Officer and will be referred to as the Contract Compliance Specialist:

Community Development Department
Contract Compliance Specialist
City of Sioux Falls
235 West Tenth Street
Sioux Falls, SD 57104
(605) 367-8176 or Fax (605) 367-4599

Implementation of the City's DBE Plan is the responsibility of the Contract Compliance Specialist. The duties are to include, but not be limited to, the following;

- A. Maintains, monitors, and enforces the City's DBE plan and program.
- B. Provides guidance and technical assistance on contract-related matters concerning the above referenced plan, program, acts, and orders.
- C. Maintains liaison with minority businesses, and individuals that represent the concerns of DBEs.
- D. Prepares and submits compliance reports as necessary or required, arranges and conducts meetings and presentations on various program/plan related matters.
- E. Conducts field interviews and/or monitoring visits as required to ensure compliance with federal regulation on applicable federally assisted projects.
- F. Monitors state and federal regulations regarding contract compliance and initiate procedural and/or program changes as necessary.
- G. Performs other such duties and functions as are necessary or incidental to the proper performance of this position.

An organizational chart displaying the Contract Compliance Specialist's position in the organization is found as an attachment to the DBE Plan.

The Contract Compliance Specialist has direct, independent access to the Mayor concerning DBE program matters.

Within the City of Sioux Falls, the Directors of the major organizational units (City Attorney, Finance, Planning/Building Services and Public Works), or their designated representatives are responsible to notify the Contract Compliance Specialist of any forthcoming awards or contracts which may involve federal financing of any nature and thereby ascertain through conference with the Contract Compliance Specialist proper documentation necessary for each appropriate contract activity. Upon bid opening, these same representatives are responsible to provide the Contract Compliance Specialist with all submitted DBE documents for review and accuracy.

2.5 DBE Plan Updates. (49.26.21)

The City of Sioux Falls will begin using the overall goals on October 1 of each year, unless other instructions have been received from an applicable authorizing organization, or if the goal is established on a project basis, by the first solicitation for a federally-assisted contract for said project. The City of Sioux Falls will continue to carry out this program until all the operating administration (OA) applicable federal funding assistance has been expended and the OA requirements have been completed and closed out according to the funding agreements. Updates representing significant changes, to this plan, will be provided to the appropriate federal agencies in accordance with 49 CFR 26.21.

2.6 Quotas: (49.26.43)

The City of Sioux Falls will not use quotas in the administration of this DBE Plan.

2.7 DBE Financial Institutions: (49.26.27)

The City of Sioux Falls will investigate the extent of services offered by financial institutions owned and controlled by socially and/or economically disadvantaged entities in the community. It will make reasonable efforts to use these institutions, and to encourage prime contractors on federally assisted contracts to make use of these institutions. Each year the South Dakota Division of Banking will be contacted to determine if there are any applicable financial institutions within the area. Information on the availability of such institutions may be obtained through the Contract Compliance Specialist.

2.8 DBE Over-Concentration:(49.26.33)

As of the date of this plan, and its updating, the City of Sioux Falls has found no evidence of over-concentration of DBEs in any types of work and does not believe that measures to address over-concentration are necessary. The City of Sioux Falls is not aware of over-

concentration in a particular work area. However, any firm working for, or attempting to seek work with the City who feels their opportunity to participate in a federally applicable contract has been unduly burdened because of an over-concentration of DBE firms in a specific type of work may file a complaint with the Department. The complaint must include examples of how their opportunity to obtain work has been impaired, and the names of DBE firms that have affected their ability to obtain work with the City. The reconsideration official will review all pertinent records, and if necessary, solicit additional information from other contractors and DBE firms to determine if the burden is a result of over-concentration. The complainant shall, within 90 days, be informed in writing of the city's decision along with the reasons for that determination.

If the City determines that the complainant's opportunities have been unduly burdened due to over-concentration of DBEs in a specific type of work, action will be taken to alleviate that problem. The City of Sioux Falls will consider options such as the use of incentives, technical assistance, business development plans, or mentor-protégé plans. Other appropriate measures may also be considered that assist DBE firms in performing work outside the specific work types where non-DBE firms are unduly burdened. The City of Sioux Falls may also consider other measures such as varying the use of contract goals or adjusting the credit allowed for certain types of work, to ensure that non-DBE firms are not unfairly prevented from competing for subcontracts. Any determination of over-concentration and subsequent remedy will be reviewed and approved by the Federal DOT to ensure that changes do not result in disparate treatment.

2.9 Administrative Reconsideration

Within ten (10) days of the mailing of a certified letter by the City of Sioux Falls that it is not responsive, because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. The bidder will make this request in writing to the following reconsideration official:

Director Community Development
235 West Tenth Street
Sioux Falls, SD 57104
605-367-8180

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

As part of the reconsideration, the bidder 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 will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The City of Sioux Falls will send the bidder 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 United States Department of Transportation.

The City may provide for a business development plan and/or mentor-protégé program for DBEs who want to improve and/or expand their business. If a business development program and/or mentor-protégé program is implemented, the City will follow the procedures outlined in 49 CFR 26.35.

Section 3—DBE Certification

3.1 Certification: (49.26 subpart D & E)

The City of Sioux Falls will use the certification services of the State of South Dakota Department of Transportation's Unified Certification Program. These are consistent with Subpart D of Part 26 and the certification procedures of Subpart E of Part 26, in determining the eligibility of firms to participate as DBEs in applicable DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The SDDOT will make their certification decisions based on the facts as a whole.

Firms that wish to participate as DBEs in the federal-aid programs of the City of Sioux Falls must be certified as eligible DBE firms by and through the South Dakota Department of Transportation's Disadvantaged Business Enterprise Certification process. Any firm believing it may qualify and become certified, in order to be placed in the South Dakota Disadvantaged Business Enterprise Directory of Certified DBE Firms, may apply to the South Dakota Department of Transportation, Civil Rights Program, 700 East Broadway, Pierre, SD 57501-2586, or telephone (605) 773-4906.

In the event the SDDOT proposes to remove a DBE's certification, they will follow procedures consistent with §26.87.

If SDDOT denies a firm's application or decertify it, it may not reapply until 12 months have passed from the action.

Firms that SDDOT has certified or reviewed and found eligible will continue to be reviewed each time their annual affidavit is received. Determinations will be made on a case-by-case basis whether a new application will be required and an onsite review conducted, however reviews will not be conducted more than once during a three-year period.

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

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 Seventh Street SW, Room 2104
Washington, DC 20590

Any U.S. DOT certification appeal decisions affecting the eligibility of DBEs will be promptly implemented as directed by U.S. DOT.

3.2 Certified DBE Directory. (49.26.31)

The City of Sioux Falls will use the most current South Dakota Department of Transportation's Disadvantaged Business Enterprise Directory of Certified DBE Firms (the Directory), in order to maintain and fulfill its obligation under 49 CFR Part 26. The Directory lists the firm's name, address, telephone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The South Dakota Department of Transportation revises the directory annually at a minimum and is updated on a regular basis. Copies of the current directory are available from the Contract Compliance Specialist, at the Community Development Office, 235 West Tenth Street, Sioux Falls, SD, 57104, or by calling (605) 367-7125. The Directory may also be obtained by contacting the South Dakota Department of Transportation, Civil Rights Program, 700 East Broadway, Pierre, SD 57501-2586, or telephone (605) 773-4306.

The City of Sioux Falls does not intend the listing of names in the South Dakota Department of Transportation's Disadvantaged Business Enterprise Directory of Certified DBE Firms to be construed as an endorsement or recommendation of said firms.

Section 4—DBE Participation Goals

4.05 Overall Annual DBE Goals

The City of Sioux Falls will recalculate overall goals for each new fiscal year. Those goals will be the percentage of applicable federal financial assistance expended on DOT- and non-DOT-assisted contracts.

The following are summaries of the methods we used to calculate these goals: reference Sections 4.8 and 4.9 of the Plan for the detailed analysis of DOT DBE methodology, and Sections 4.6 and 4.7 for the non-DOT methodology.

- The City of Sioux Falls utilized Example 2 from 49 CFR 26.45(c) to obtain the base figure.
- The data sources used to derive the numerator and denominator were based upon the DBE directory prepared by SDDOT, adjusted for willingness to participate and the total number of number of bidders, both prime and subs, that have responded to applicable projects.
- The relative availability percentage will equate to the percentage derived by dividing the total bidding firms into the DBE firms identified from the state certified listing of DBEs.
- Step 2 adjustments will be made according to 49 CFR 26 (d)(1) based on the volume of DBE performance relative to the amount available for contracting opportunities for the preceding 12-month period.

Race-Neutral and Race-Conscious Breakout

The City of Sioux Falls feels it can meet 75 percent of the overall DOT-DBE goal through the use of Race-Neutral activities and 25 percent of Race-Conscious activities.

Please reference Section 6.4 of the City of Sioux Falls DBE Plan for additional details pertaining to the City's race neutral measures.

4.1 Policy

It is the policy of the City of Sioux Falls that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts and subcontracts. To assist in promoting this policy, the City of Sioux Falls establishes goals for participation by such business enterprises in all applicable federally assisted projects. These goals represent the level of participation and performance that the City of Sioux Falls reasonably believes such business enterprises can render through the requirements of 49 CFR Part 26.

4.2 Categories of Goals for Award

The City of Sioux Falls hereby creates the following separate categories of goals:

Disadvantaged Business Enterprise Goals for DOT financially assisted projects

This goal will be referred to as DBE-DOT goal. The goal under this category relates only to projects financially assisted by the U.S. DOT. Those business enterprises that are socially and economically disadvantaged as defined in Section 1, and who are certified under the State of South Dakota DOT Disadvantaged Business Enterprise Plan, will be valid toward fulfillment of this goal.

Disadvantaged Business Enterprise Goals of non-DOT financially assisted projects

This goal will be referred to as DBE non-DOT goal. The goal under this category relates to those applicable federally assisted projects not directly related to or financed in whole or part by the U.S. DOT. Those business enterprises that are socially and economically disadvantaged as defined in Section 1, and who are certified under the State of South Dakota DOT Disadvantaged Business Enterprise Plan will be valid toward fulfillment of this goal.

4.3 Public Participation (49.26.45(g) & (h))

Prior to submitting the overall goal each year, the City of Sioux Falls will consult with general contractor group, and organization or individuals having information concerning the availability of disadvantaged and non-disadvantaged businesses. The City will hold a public meeting annually. Notices will be mailed to all certified DBEs in the Sioux Falls metropolitan statistical area and listed in the South Dakota DOT DBE Directory. Notices will also be mailed to other organizations dealing with DBEs, in order to obtain their input on the proposed DOT and non-DOT goals for the City of Sioux Falls. Following these consultations the City of Sioux Falls will publish, in the City's officially recognized newspaper, a notice of the proposed goals. This notice will inform the public of the proposed goals. It will also inform the public of a 30-day availability for inspection of the proposed goals and the development rationale; also that the City will accept written comments pertaining to the goals for 45 days from the date of the notice. This notice will include the addresses to which comments may be sent and where the proposal may be reviewed.

The overall goal submission to the applicable operating administration will include a summary of information and comments received during the public participation process.

4.4 Establishment of Goals

The City of Sioux Falls shall establish numerical participation goals for both DOT and non-DOT categories. Such goals shall be set annually for the time period October 1 through September 30.

A. Factors Considered When Setting Goals

The following factors shall be considered when setting overall percentage goals:

1. The number and types of applicable contracts awarded by the City of Sioux Falls, or recipients.

2. The total number and type of disadvantaged business enterprises likely to be available to compete for applicable contracts or subcontracts from the City of Sioux Falls, or recipients.
3. The total number and type of disadvantaged business enterprises awarded contracts from the City of Sioux Falls, or recipients.
4. Any other pertinent information necessary to accomplish the setting of appropriate goals.

B. How Established

1. Notice: On or before June 15 of each year, the City of Sioux Falls shall publish a notice in a newspaper of general circulation announcing the proposed goals, and informing the public of the following:
 - a. The availability of the proposed goals for inspection during normal business hours, in the office of Community Development, for a period of 30 days from the date of the notice.
 - b. That the City of Sioux Falls, will accept comments on the goals for 45 days from the date of publication of the notice, and giving the address to which such comments should be sent.
2. Goal finalization: On or before August 1 of each year, numerical percentage participation goals by category shall be finalized and approved by the City. A copy of the document setting percentage participation goals by category shall be kept in the City of Sioux Falls Community Development office. This Document shall be available for public inspection during normal business hours.

4.5 Transmittal to Federal Department or Agency

Annually, after the comment period, and within ten days after the approval of the numerical percentage participation goals by category, the City's Contract Compliance Specialist shall forward a copy of the goals to each appropriate federal department or agency. Submittal of DBE-DOT goals shall occur at least 60 days prior to the federal fiscal year to which the goal applies. The City of Sioux Falls will submit its overall goals to the applicable agencies by August 1 of each year for review.

4.6 Determining the Base Non-DOT DBE figure (49.26.45(c))

The first method considered in determining the base figure for the relative availability of DBEs was the State DOT DBE directory and U S Census Bureau data. However, in reviewing the Census Bureau data and appropriate Standard Industrial Classification (SIC) codes, it was determined that accurate data was not available for a valid determination. For example, Census Bureau data from Minnehaha and Lincoln counties lists 44 contractors under the code for electrical work. At present there are only two electrical contractors in the DBE Directory. This method is not practical because it would give an inappropriately low DBE percentage.

It was determined that a list of all DBEs that have bid or supplied, as well as all other known firms (including non-construction firms such as architectural and engineering) would provide a fair representation of firms that are “ready, willing and able” to perform in the Sioux Falls non-DOT DBE projects. This data will be compiled annually from information supplied by the City departments associated with non-DOT DBE bid letting, for the 12 months preceding the calculation and will be maintained on file with the Contract Compliance Specialist.

The basis for goal calculation will be the use of federally funded projects let during the prior fiscal period and the comparison of actual DBE contracts awarded for those projects.

The City of Sioux Falls has not conducted disparity studies.

4.7 Adjustments to the Base non-DOT DBE Figure (49.26.45(d))

If it is determined that an adjustment is warranted, the current capacity of DBEs will be analyzed based upon the number of contracts awarded to both DBE and non-DBE firms and the total number of DBE and non-DBE contractors bidding within the time frame specified. In addition, the dollar amounts of the contracts bid upon and awarded will be analyzed in order to develop an adjustment to the fiscal year goal. These data will be maintained on file by the Contract Compliance Specialist.

4.8 Determining the Base DOT-DBE figure (49.26.45(c))

It was determined that a bidders list of all DBEs that have bid or supplied, as well as all other known firms (including non-construction firms such as architectural and engineering) would furnish a fair representation of firms that are “ready, willing, and able” to perform in the Sioux Falls DOT DBE projects. This data will be compiled from information supplied by City departments associated with DOT DBE bid letting for the prior fiscal year period and maintained by in the Community Development Department.

As a basis for calculation, the total number of DBEs in the most current State of South Dakota directory will be used. The methodology will then remove those firms not utilized in DOT-assisted projects and those specifying restrictions of areas serviced. The remaining listing would then be DBE firms ready, willing, and able to perform on projects within Sioux Falls. The actual goal calculation will utilize the historic data providing actual dollar volume of DOT contracts for the period and compare that to the dollar volume of work done by DBE firms

4.9 Adjustments to the Base DOT-DBE Figure (49.26.45(d))

If the City feels the base DOT-DBE goal is inappropriate, an adjustment may be necessary in order to provide an appropriate and attainable overall goal. This adjustment may be based upon the use of disparity studies and/or the goal utilized by another recipient in the geographic area.

The City of Sioux Falls has not participated in construction projects funded by DOT within the past several years and no projects are planned. The current goal of 6.0 percent of assisted contracts will apply to future construction projects until data to support re-calculation is collected.

4.10 Transit Vehicle Manufacturers (TVM) (49.26.49)

Each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, shall certify that it has complied with all applicable requirements in 49 CFR Part 26.

Section 5—DBE Contractor Benefits

5.1 Policy

It is the policy of the City of Sioux Falls, as a means of attaining its overall Disadvantaged Business Enterprise goals, to establish unique procedures for DBE contractors to bid on federally assisted contracts covered by this plan.

5.2 Eligibility

Any person, firm, or legal entity holding a current South Dakota DBE Certificate of General Eligibility shall be allowed to compete for any award/project covered by this plan without regard to economic or social class, category or goals.

5.3 Technical Assistance (49.26.51(b)(3))

The City of Sioux Falls, their recipient or other entity which prepares bid documents applicable under this plan shall provide technical assistance to any certified eligible participant in order to aid the participant in understanding all phases of the technical requirements concerning the work to be performed on the project.

5.4 Performance Bond (49.26.51(b)(2))

The City of Sioux Falls or their recipient, receiving federal financial assistance applicable to this plan, may support DBE certified eligible participants in procuring a performance bond. The advance will be deducted from the contract proceeds owed to the contractor for the project involved.

5.5 Performance Bond Waiver (49.26.51(b)(2))

The City of Sioux Falls or their recipient, through concurrence from the City of Sioux Falls, may permit a waiver of the performance bond requirements for construction projects under \$25,000 or supplies, materials, and equipment. This waiver, in lieu of posting the required performance bond, conditions the participant's right to payment upon prior inspection, approval, and acceptance of the participant's work or product. The inspections, approvals, and acceptances must be done in writing. The inspector must be mutually acceptable to the contractor/vendor/supplier and the City of Sioux Falls to make such decisions and having no conflict of interest association to the firm doing the work. Requests will be directed through the prime contractor, the property owner, and project engineer/architect (with recommendations), and then to the City Contract Compliance Specialist.

The appropriate director, or their designee, or recipient, or designated representative may decide, in writing, that a bond is required. In this event, this benefit is denied. Instead, the provisions of Subsection 5.4 may be used to provide the performance bond premium.

5.6 Other Assistance (49.26.51(b)(3))

The Contract Compliance Specialist shall provide assistance to the disadvantaged business enterprises to aid them in complying with the requirements of this plan. Such assistance may include:

- A. Making contact with federal, state, or local departments and/or agency referral services for the purpose of soliciting technical, professional, and financial assistance.
- B. Assistance in preparation of forms and other documents required to be filled out by such department or agency.

Section 6—Race-Neutral and Race-Conscious Participation

6.1 Policy

The City of Sioux Falls, as a means of attaining its overall DBE goals, requires all recipients to take all necessary and reasonable steps, in accordance with this plan, to ensure that business enterprises holding South Dakota DBE Certificates of General Eligibility have the maximum opportunity to compete for and perform subcontracts. The Contract Compliance Specialist shall ensure that the goal requirements, both DOT and non-DOT, that are attached to all applicable federally financed project, are the appropriate goals. Goals shall be acknowledged prior to any pre-bid conferences being held or invitations to bid are published.

6.2 Filing Public Notices with Contract Compliance Specialist

The Director of a City major organizational unit or their designated representative who approves the use of federal assistance for a project, or any other entity, including recipients of the City, who prepare bid documents shall file a copy of the proposed “invitation to bid” with the Contract Compliance Specialist at least five working days prior to publication of such notice.

6.3 Race-Neutral Goal Process (49.26.51(a) & (b))

The City of Sioux Falls, in attempting to meet its overall DBE goal by using race-neutral means to facilitate DBE participation, will utilize the following race-neutral means to increase DBE participation:

- A. Notice to Certified DBEs of Pending Projects (49.26.51(b)(4)
The City of Sioux Falls, through the contract compliance specialist, shall serve notice, by U.S. Mail, upon all entities holding South Dakota Certificates of General Eligibility, informing them of applicable federally financed projects that will be advertised for competitive bids. However, this notice shall be limited to those entities that are listed as having the expertise and capabilities to perform the type of work involved in the contract project. The notice shall contain:
 - 1. A statement of the City’s goal, as a percentage of the particular project.
 - 2. A brief description of the work being bid.
 - 3. The date, time, and place scheduled for the pre-bid conference.
 - 4. The date scheduled by the City of Sioux Falls, or recipient, to receive and open public bids.
 - 5. A statement of where a copy of the bid specifications may be obtained.
 - 6. A copy of the “invitation to bid” notice which will be published.
- B. Provide the South Dakota DBE directory to the widest feasible array of prime contractors.
- C. Refer DBEs to other resources for assistance when appropriate.

6.4 Contract Goals (49.26.51(c) & (d))

The City of Sioux Falls estimates that in meeting its overall goal, it will obtain 75 percent of the goal through race-neutral participation and the remainder through race-conscious means if necessary. For reporting purposes, race-neutral DBE participation includes, but is not limited to, the following:

- A. Disadvantaged Business Enterprise participation through a prime contract that a DBE obtains through customary competitive procurement procedures.
- B. DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
- C. DBE participation on a prime contract exceeding a contract goal.
- D. DBE participation, through a subcontract, from a prime contractor that did not consider a firm's DBE status in making the award.

The City of Sioux Falls will use contract goals to meet that portion of the overall goal not projected to be met using race-neutral means. Contract goals are established so, over the period that the overall goal applies, the cumulative result will be the City reaching this goal. The City of Sioux Falls may not establish contract goals on all federally assisted contracts. The size of the contract goal will be adapted to the circumstances of each such contract (e.g. type and location of work or availability of DBEs to perform the particular type of work). The City of Sioux Falls will establish contract goals only on those federally assisted contracts that allow subcontracting opportunities. Contract goals will be expressed as a percentage of the estimated cost of a federally assisted contract necessary to meet the City's overall goal.

6.5 Effect of Failure to Perform

The failure of the City of Sioux Falls to perform one or more of the acts outlined in this Section 6 are hereby presumed to constitute harmless error. Any person claiming injury as the result of such failure shall be presumed to have suffered no injury or damage unless that person rebuts this presumption by clear and convincing evidence to the contrary.

6.6 Appeal

The setting of overall, category, and project goals is not subject to appeal.

Section 7—Contractor Requirements and Assurances

7.1 Contract Assurances (49.26.13)

Recipients, sub-recipients, prime contractors, and lower-tiered contractors, will include the following clause in every applicable federally assisted contract and subcontract.

“The recipient, sub-recipient, prime contractor or lower-tiered contractors shall not discriminate on the basis of race color, national origin, or sex in the performance of this contract. The recipient, sub-recipient, prime contractor and lower-tiered contractors will carry out applicable requirements of 49 CFR Part 26 in the award and administration of federally assisted contracts. Failure 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.”

7.2 Prompt Payment (49.26.29)

A. Assurance of Payment

If a subcontractor is not paid by the prime contractor in accordance to paragraph 7.2 B., a claim may be presented to the City’s Contract Compliance Specialist. This claim, if upheld, is against money owed by the City of Sioux Falls and/or its recipients to the prime contractor for the same project only.

B. Promptness of Payment

The prime contractors and lower-tiered contractors will include the following clause in every applicable federally assisted contract and subcontract.

“The City of Sioux Falls and/or its recipients require each prime contractor to pay all subcontractors not later than 30 days after satisfactory performance of their contract. The prime contractor further agrees to return any 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 timeframe may occur only for good cause following written notification of the specific disagreement, by the prime contractor to the subcontractor, the recipient, and the City Contract Compliance Specialist. This notification must be received not less than 15 days after the subcontractor has notified the prime contractor of the completion of the subcontracted work. Written acknowledgment of the delay or postponement for good cause will be forwarded from the City of Sioux Falls to all involved parties.”

7.3 Bidders List (49.26.11(c))

The City will create a separate bidder list, for each category of goals, consisting of information about DBE and non-DBE firms that bid or quote on applicable federally

assisted contracts. The bidder list is used in calculating the overall goals. The list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

The City will collect information in the following manner:

Each entity or designee with responsibility for a bid opening, shall provide the Contract Compliance Specialist with the names and addresses of all firms (including subcontractors) bidding or quoting on applicable federally assisted contracts that will be awarded contracts.

The South Dakota DOT maintains information regarding the age of the firm and annual gross receipts for all certified DBEs. Upon request by U.S. DOT, FTA, FHWA, or U.S. HUD, the City will request information regarding the age of the firm and gross receipts from SDDOT, suppliers and other contractors/vendors on the bidders list where this information is not available.

Section 8—Disadvantaged Business Enterprises Procedures

8.1 Policy

The City of Sioux Falls establishes the following procedures to accomplish the DBE goals of this plan in accordance with 49 CFR 26, for all applicable federally financed projects:

8.2 Pre-Bid Conference

A. Responsibility

The City of Sioux Falls or their recipient shall schedule and hold a pre-bid conference for each construction project that is applicable to this plan. It is the duty of the appropriate department or their recipient of the federal financial assistance to ensure that the pre-bid conference is scheduled for the project. The pre-bid conference shall be held at least ten calendar days before the date fixed by the City or their recipient to receive and open public bids.

B. Conference

At the pre-bid conference, the City or their recipient shall provide a contact person to answer any questions pertaining to the work to be performed and shall explain each phase of the work involved. If the City or their recipient did not prepare the bid specifications, a representative of the entity who prepared the specifications shall be responsible to answer any questions pertaining to the work to be performed and shall explain each phase of the work involved. In addition, the City's Contract Compliance Specialist shall be present to answer questions pertaining to this DBE Plan.

C. Bidder Compliance

The City of Sioux Falls treats bidder's compliance as a matter of responsiveness. All solicitations for DBE applicable federally assisted contracts require each bidder to submit a Bidders Activity Report and Form A (Schedule for DBE Participation) if DBE participation is accomplished. These forms must be submitted with the proposal, or the proposal is considered non-responsive. If a contract goal is not met, evidence of good faith effort documentation must be submitted with the proposal. Within seven days of the bid opening, and prior to award of the contract, the low bidder must submit Form A-1 (DBE Notification of Intent to Subcontract), for each DBE firm listed on Form A providing the following:

- Written and signed documentation of commitment to use a DBE subcontractor or supplier.
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.

8.3 System for Determining Good Faith Efforts

A. General

Each contractor submitting a bid to the City of Sioux Falls or their recipient, for a project covered by this plan, shall exercise good faith efforts to subcontract, at a minimum, a portion of the project equal to the percentage goal indicated by the City

of Sioux Falls for DBE participation. Nothing in this subsection is intended to preclude or discourage a contractor from engaging in additional activities to achieve or exceed this goal.

B. Guidance Concerning Good Faith Efforts

To determine whether a competitor that has failed to meet DBE participation, the City must decide whether the efforts of the competitor made to obtain DBE participation were “good faith efforts.” Efforts that are of usual and normal occurrence are not ordinarily considered good faith efforts to meet the goals. The City will determine, given all relevant circumstances, if the efforts reasonably produced a level of DBE participation sufficient to meet the goals.

The City presents here a list of the examples of “good faith efforts” that contractors may make in obtaining DBE participation. It is not intended to be a mandatory checklist. The City does not insist that a contractor do any one, or any particular combination, of the things on the list. Nor is the list intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. In determining whether a contractor has made good faith efforts, it will usually be important for the City to look not only at the different kinds of efforts that the contractor has made, but also the quantity and intensity of those efforts. Therefore, documentation specific to each DBE contacted should be submitted with Form B.

1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the City of Sioux Falls or recipient to inform DBEs of contracting and subcontracting opportunities.
2. Whether the contractor advertised in general circulation, trade association, and disadvantaged-focus media concerning the subcontracting opportunities. Simple placement of an ad in an above mentioned outlet does not constitute good faith efforts. Follow-up contacts must be made, responses documented and provided with Form B.
3. Whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively.
4. Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested.
5. Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation).
6. Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.

7. Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the City, their recipient, or contractor.
9. Whether the contractor effectively used the services of available disadvantaged/women community organizations; disadvantaged/women contractor groups; local, state, and Federal Disadvantaged Business Enterprise assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs.

C. Good Faith Effort Responsibility

The Contract Compliance Specialist will be responsible for determining whether a bidder/offeror who has not met the met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The Contract Compliance Specialist will ensure that all information is complete, accurate and adequately documents the bidders/offeror's good faith efforts before committing to the performance of a contract by the bidder/offeror.

For Administrative Reconsideration, refer to Item III. B.

8.4 System for Crediting DBE Participation (49.26.55)

A. General

Every prime contractor who submits a bid proposal on an applicable project covered by this plan shall be given credit toward achieving the percentage goals applicable to the project being contracted, in accordance with this subsection.

B. Counting DBE Participation Toward Goal

1. DBE contractors may count only the value of the work actually performed by the DBE toward DBE goals.
 - a. Contractors may count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (b)(2) of this section) that is performed by the certified DBE's own employees. Participation may include the cost of supplies and materials obtained by the certified DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

- b. Contractors may count the entire amount of fees or commissions charged by a certified DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services; or for providing bonds or insurance specifically required for the performance of an applicable federally assisted contract; toward DBE goals [after submittal of signed documentation showing the actual fee(s) charged and a contact person (business name, address, phone) and short description of the service provided].
- c. A DBE contractor may **NOT** count the amount of his/her contract that has been subcontracted to another firm unless and only if that firm in itself is a certified DBE firm. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

2. Joint Venture(s)

DBE contractors as a participant within a joint venture may count that portion of the total dollar value of the contract equal to the distinct clearly defined portion of the work, of the contract that the DBE performs with its own forces, toward the DBE goals.

- 3. Contractors may count the amount, toward goals, of expenditures to a DBE supplier only if that DBE supplier performs a commercially useful function in the supply process by assuming the actual and contractual responsibility for the provision of the materials and supplies.
- 4. Prime or subcontractors shall contact the Contract Compliance Specialist with questions concerning the applicability, and/or amount of credit toward goal of any subcontractor or lower tier contract scenarios not specifically mentioned in this section.

C. No Credit

A prime contractor shall receive no credit toward fulfillment of any goal requirements of this plan for:

- 1. Any subcontract entered into with a DBE who has not received a South Dakota Certificate of General Eligibility and/or;
- 2. Any subcontract, the performance of which does not render a commercially useful function.
 - a. Presumption: The following subcontracts or performance of subcontracts in the following manner are presumed to render a non-commercially useful function:

- Subcontracts for performance of a portion of the work, but contracted work is performed in reality by the prime contractor.
 - Subcontracts for performance, but which the certified DBE enters into a lower-tier subcontract(s) with third-party non-certified entities.
 - Subcontracts for the provision of materials and supplies entered into with a non-merchant DBE where that DBE merely serves as a conduit.
- b. Rebuttal of presumption: A person who is a party/participant to a contract which comes within the types described in the preceding subparagraph may rebut this presumption by showing that, in industry practices and under the conditions as they existed, the performance rendered by the certified DBE both:
- Constituted a bona fide transaction.
 - Provided a service indispensable to the performance of the contract project.
- D. Appeal: The approval of credit or disallowing of credit may be appealed in accordance with Section 10.

8.5 Contractor's Compliance Requirements

A. DBE (Sub) Contractor's Failure to Perform Successfully

It is expected that the DBE firms listed on the Schedule of DBE Participation (Attachment 1) will perform the work specified and at the dollar levels and percentage levels specified. No substitution of DBE firms so named will be permitted except in cases of default, DBE over-extension, or similar justification, and then only if the contractor has made sufficient good faith efforts to replace the firm with another DBE. The contractor must provide documented good faith efforts for review by the Contract Compliance Specialist, and the Contract Compliance Specialist must provide a written consent to the substitution.

At no time during the contract period will a contractor terminate for convenience a DBE Contractor listed on Form A and perform the tasks, with its own personnel or those of an affiliate, without the Contract Compliance Specialist's written consent.

If the Contractor fails or refuses to comply with the substitution requirements, liquidated damages may be assessed. If it is found that a contractor knowingly attempted to circumvent the requirements of this section, sanctions may be imposed that include any or all of the following:

- Appropriate City office will issue an order stopping all or part of payment/work until satisfactory action has been taken.
- Assessment of liquidated damages.

- Suspension of bidding privileges.
- Withholding progress payments.
- Securing additional DBE participation of future federal-aid contracts sufficient to make up for the DBE participation found to be unallowable.
- Referral of the matter for criminal/civil prosecution.

B. Request for Waiver of Goal

If the contractor finds it impossible, for reasons beyond his control, to meet the level of DBE participation as stated on the “Schedule of DBE Participation” during the contract period, he shall make a written request to the Contract Compliance Specialist for a waiver of goal. The prime contractor shall submit in writing those reasons that are believed to justify the granting of a waiver. Upon review, the Contract Compliance Specialist shall provide a written response to such request, and provide the contractor with options to alleviate the causes for the request or grant a request for waiver of the associated goal.

C. DBE Payment Certification (49.26.37)

At the completion of each project, the prime-contractor must submit to the City of Sioux Falls and/or recipient a “Certification of DBE Payments” which will include:

1. The names of DBE firm(s) participating in the contract
2. DBE Federal Tax Identification Number
3. Dollar amount of payments made to each DBE firm
4. Date of each payment to each DBE firm

8.6 Record Keeping and Reporting (49.26.11)

The directors of the City’s major organizational units or their designee shall provide all necessary information to comply with the regulations and requirements of record keeping and reporting or documentation thereof to verify the accomplishment of said requirements.

A. Retention and Inspection

The City’s Contract Compliance Specialist shall maintain records of the following:

1. Procedures that the City of Sioux Falls has adopted to implement the federal DBE requirements.
2. Awards to DBEs, and how these awards compare to projected DBE awards or DBE goals.
3. Specific efforts to identify and award contracts to DBEs,

B. Reporting

1. Frequency and format. The City shall submit reports conforming in frequency and format to the requirements of the operating administration or agency with jurisdiction in the matter. Where no such reporting requirement exists, DBE reports shall be submitted annually.
2. Content: The Contract Compliance Specialist shall report the following information to the applicable federal department or agency involved:
 - a. The number of contracts awarded to disadvantaged business enterprises.
 - b. Description of the general categories of contracts awarded to disadvantaged business enterprises.
 - c. The dollar value of contract awarded to disadvantaged business enterprises.
 - d. The percentage of the dollar value of all contracts awarded to disadvantaged business enterprises.
 - e. Indication of whether and the extent to which the percentage met or exceeded the goals established.

C. OFCCP compliance and reporting:

All entities performing under a contract with the City of Sioux Falls, or their recipient, shall be responsible for complying with all regulations of the Office of Federal Contract Compliance Programs (OFCCP).

Section 9—Compliance and Enforcement

9.1 Compliance Review

The Contract Compliance Specialist will conduct compliance reviews of the contractor's performance regarding disadvantaged business goals.

A compliance review will consist of:

- A. **Desk Audit:** A review of all material and information concerning the contractor's DBE performance. If the reviewing specialist cannot make a determination based on the desk audit, an on-site review will be conducted.

- B. **On-Site Review:** The Contract Compliance Specialist will periodically conduct field reviews at selected contract sites which may include interviews for the purpose of verifying the completeness and accuracy of the information submitted on the Attachment 1. It may also include inspection of any statistical or documentary materials relevant to the contractor's performance which was not available for review during the desk audit, and to review information and records regarding actual DBE work performed, applicable to DBE requirements, on federally assisted projects. Aspects of DBE activity included in this monitoring activity may include but not be limited to type of work being done, use of equipment, use of personnel, and supervision by the DBE firm. The Contract Compliance Specialist may conduct any follow-up investigations necessary in order to ascertain whether or not the project activity meets contractual and regulatory requirements.

9.2 Enforcement

If reasonable cause exists to believe that the contractor is not in compliance with its DBE obligations, the Contract Compliance Officer will bring to the attention of the South Dakota Department of Transportation all compliance concerns and improprieties. It shall report any false, fraudulent, or dishonest conduct to the DBE liaison Officer, Civil Rights Office, South Dakota Department of Transportation for further action under its compliance and enforcement procedures. This may include, but not be limited to, referral to Department of Justice, referral to the U.S. DOT Inspector General, action under suspension and debarment, or Program Fraud and Civil Penalties rules as provided in 49 CFR 26.107.

Section 10—Protests and Appeals

Questions and/or appeals with respect to certification of an original application, re-certification or de-certification of a Disadvantaged Business Enterprise firm **must** be directed to the South Dakota Department of Transportation, Civil Rights Program, 700 East Broadway, Pierre, SD, 57501-2586, or telephone 605-773-4306.

The following procedures shall be used to protest an administrative decision concerning the procedures contained within this plan.

- A. The entity protesting shall file a written statement with the Contract Compliance Specialist. The statement shall specifically declare the reason for the protest and contain any supporting facts and documents. The statement and documentation must be received by the Contract Compliance Specialist not later than seven calendar days following a written notice by the City to be protested.
- B. The Contract Compliance Specialist shall forward the protest to the Director of Community Development along with all supporting documentation.
- C. The Director of Community Development shall review the information received and render a decision regarding the protest. The decision shall be in writing and reviewed by the City Attorney before being issued.
- D. The Community Development Director's decision, or a denial, may be appealed by the protesting entity. The appeal shall be processed as an administrative appeal pursuant to the Code of Ordinances, Article VI, Section II, parts 60 through 66 of the City of Sioux Falls.