



City of Grand Island

Tuesday, April 24, 2018

Council Session

Item G-8

#2018-110 - Approving Nebraska Unified Certification Program for Disadvantaged Business Enterprises Agreement in Connection with the City's Transit Program

Staff Contact: John Collins, P.E. - Public Works Director

Council Agenda Memo

From: Charley Falmlen, Transit Program Manager

Meeting: April 24, 2018

Subject: Approving Nebraska Unified Certification Program for Disadvantaged Business Enterprises Agreement in Connection with the City's Transit Program

Presenter(s): John Collins PE, Public Works Director

Background

The City of Grand Island is the recipient of the United States Department of Transportation (USDOT) financial assistance, which includes Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). The FTA requires that all communities which receive these funds adopt a Disadvantaged Business Enterprise (DBE) Plan. This plan sets forth how the City of Grand Island will ensure that DBE's have an equal opportunity to receive and participate in Department of Transportation-assisted contracts.

On June 27, 2017, via Resolution No. 2017-183, Grand Island City Council approved the Disadvantaged Business Enterprise Plan for the City of Grand Island.

Discussion

In an effort to streamline the certification process for all eligible Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) the State of Nebraska has established the Nebraska Unified Certification Program (NUCP) for Disadvantaged Business Enterprises Agreement. Such agreement will consist of the City of Grand Island, Lincoln Airport Authority (LAA), Lincoln Area Metropolitan Planning Organization (LAMPO), Lincoln StarTran (StarTran), Omaha Airport Authority (OAA), Omaha Metro Area Transit (Metro), Omaha-Council Bluffs Metropolitan Area Planning Agency (MAPA), and Nebraska Department of Transportation (NDOT).

The NUCP will follow all certification procedures and standards of 49 CFR Part 26 and 49 CFR Part 23 on the same basis as the recipients. The advantage for all disadvantaged business enterprise and recipients of financial assistance is one standardized application will be utilized with a uniform application process, such that an applicant is required to apply only once for certification that will be honored by all recipients.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Administration recommends that the Council approve the Nebraska Unified Certification Program for Disadvantaged Business Enterprises Agreement in connection with the City's Transit Program.

Sample Motion

Move to approve the resolution.

Nebraska Unified Certification Program for Disadvantaged Business Enterprises

A. Statement of Policy

It is the policy of all State of Nebraska (Nebraska) recipients of United States Department of Transportation (USDOT) financial assistance (Recipients)—including assistance from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or the Federal Transit Administration (FTA)—that eligible Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) firms, as described in [Code of Federal Regulations, Title 49, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs](#) (49 CFR Part 26) and [Code of Federal Regulations Title 49, Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions](#) (49 CFR Part 23), will have a level playing field on which to participate in USDOT-assisted contracts.

In an effort to help remove barriers that may exist to the participation of all eligible DBE/ACDBE firms the Recipients enter into this agreement (Agreement) establishing a DBE/ACDBE Unified Certification Program (UCP) in accordance with the requirements of [49 CFR Part 26.81, “What are the requirements for Unified Certification Programs?”](#), [49 CFR Part 23.31, “What certification standards and procedures do recipients use to certify ACDBEs?”](#), and [49 CFR Part 23.39, “What other certification requirements apply in the case of ACDBEs?”](#).

The name of the UCP shall be the Nebraska Unified Certification Program (NUCP). The purpose of the NUCP is to create a simplified and efficient “one-stop shopping” DBE/ACDBE certification process for firms applying for status in Nebraska. To this end the NUCP will utilize one standardized application and will follow and abide by a uniform application process, such that an applicant is required to apply only once for certification that will be honored by all Recipients.

The NUCP will follow all certification procedures and standards of 49 CFR Part 26 and 49 CFR Part 23 on the same basis as the Recipients. The NUCP will cooperate fully with all oversight, review, and monitoring activities of the USDOT and its operating administrations. The NUCP will implement all USDOT directives and guidance concerning certification matters.

The Recipients agree to commit sufficient resources and expertise to the NUCP to ensure it is capable of carrying out all of the requirements of a UCP program as set forth under 49 CFR Part 26.81, 49 CFR Part 23.31 and 49 CFR Part 23.39.

The Nebraska Department of Transportation (NDOT), as a member and the designated sole certifying agency of the NUCP, will create and maintain an official directory of all

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currently certified and active DBE/ACDBE firms in Nebraska. The NDOT will publish the directory on its website (<http://dot.nebraska.gov/business-center/civil-rights/>) and will also provide a printed version upon request.

The NUCP shall be fully implemented and operational no later than eighteen (18) months following the approval of the Agreement by the U.S. Secretary of Transportation or their designee, as required by 49 CFR Part 26.81(a)(2).

B. Signatories

The following entities, as Recipients identified as being subject to the requirements of [49 CFR Part 26.21, “Who must have a DBE program?”](#) and [49 CFR Part 23.21, “Who must submit an ACDBE program to FAA, and when?”](#), are signatories to the Agreement (Signatories):

- City of Grand Island (Grand Island);
- Lincoln Airport Authority (LAA);
- Lincoln Area Metropolitan Planning Organization (LAMPO);
- Lincoln StarTran (StarTran);
- Omaha Airport Authority (OAA);
- Omaha Metro Area Transit (Metro);
- Omaha-Council Bluffs Metropolitan Area Planning Agency (MAPA); and
- Nebraska Department of Transportation (NDOT).

- (a) The Signatories agree to accept and comply with the terms and conditions of the Agreement and accept as a DBE/ACDBE any firm the NUCP has certified.
- (b) The Signatories will ensure through subgrant agreements that subrecipients accept and comply with all provisions of the Agreement and accept as a DBE/ACDBE those firms the NUCP has certified.
- (c) Any additional entity in Nebraska becoming subject to the requirements of 49 CFR Part 26.21 and 49 CFR Part 23.21 will be made a Signatory to the Agreement.
- (d) The Signatories agree to designate the NDOT Highway Civil Rights Office (HCRO) as the sole certifying agency of the NUCP.

C. Certification Determination Process

- (a) The NUCP shall make all DBE/ACDBE certification decisions on behalf of all Signatories. All certification decisions will be based on the eligibility requirements set

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forth in 49 CFR Part 26 and 49 CFR Part 23. The NUCP will ensure that only applicants that fully meet those eligibility standards are certified as a DBE/ACDBE.

- (1) Certification decisions by the NUCP shall be binding on all Signatories within the state.
 - (2) The NUCP shall provide “one-stop shopping” to applicants for DBE/ACDBE certification, such that an applicant will be required to apply only once for certification that will be honored by all Signatories.
 - (3) All certifications made by the NUCP shall be pre-certifications, i.e. certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE/ACDBE.
- (b) The NUCP will provide to applicants the DBE/ACDBE *Uniform Certification Application* form approved by USDOT pursuant to 49 CFR 26.83 and as published in Appendix F to 49 CFR Part 26. The application may be obtained from the NDOT HCRO upon request or downloaded directly from the NDOT [website](#).
- (c) All applications for DBE/ACDBE certification and all matters pertaining to DBE/ACDBE certifications in Nebraska will be reviewed and processed by the NDOT HCRO as the “one stop shop” and sole certifying agency of the NUCP. Any determination made by the NDOT HCRO will be the determination of the NUCP.
- (1) All applications for DBE/ACDBE certification and all matters pertaining to the certification of firms may be submitted directly to the NDOT HCRO. Other signatories receiving documentation or information related to the DBE/ACDBE certification of a firm will forward it to the NDOT HCRO within seven (7) days of receipt.
 - (2) The NDOT HCRO DBE/ACDBE program staff will conduct all application reviews and make a certification determination in accordance with the requirements of 49 CFR Part 26 and 49 CFR Part 23 using the process described in the [NDOT DBE/ACDBE Program Plan](#).
- (d) The NUCP will not process an application for DBE/ACDBE certification from a firm having its principal place of business outside Nebraska if the firm is not certified by the UCP in its home state.
- (e) The NUCP will share its information and documents concerning any certified firm whose home state is Nebraska with another UCP that is reviewing an interstate DBE/ACDBE application from the firm.
- (f) Determinations on in-state applications for DBE/ACDBE certification will be made by the NUCP within 90 days of receipt from the applicant firm all the information required

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under 49 CFR Part 26 and 49 CFR Part 23. The 90-day time period may be extended once, for no more than an additional 60 days, upon written notice to the firm explaining fully and specifically the reasons for the extension. If the NUCP fails to make a decision by the applicable timeline it is deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to the USDOT under the provisions of [49 CFR 26.89](#), “[What is the process for certification appeals to the Department of Transportation?](#)”.

- (g) Determinations on interstate applications for DBE/ACDBE certification will be made by the NUCP within 60 days of receipt from the applicant firm all the information required and allowed for under 49 CFR Part 26 and 49 CFR Part 23. If the NUCP fails to make a decision by the applicable timeline it is deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to the USDOT under 49 CFR 26.89.
- (h) The DBE/ACDBE Directory will be maintained on the NDOT [website](#) for viewing and download. The directory will provide an up-to-date list of NUCP-certified firms; will indicate whether a firm is a DBE or ACDBE; and will indicate the type of work each firm is eligible to perform as a DBE/ACDBE. The directory will also include each firm’s address, telephone number and fax number, and the name of its contact person. Printed versions of the DBE/ACDBE Directory will be provided by the NDOT HCRO upon request.
- (i) The DBE/ACDBE Directory, electronic and printed version, will be updated by the NDOT on an as-needed basis.

D. Appeals of Denials of Certification

- (a) In the event a firm is denied DBE/ACDBE certification by NUCP, the firm may appeal the decision to the USDOT under the provisions of 49 CFR Part 26.89 within 90 days of the date of the final decision by the NUCP. The appeal must be filed in writing to:

U. S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave. SE
Washington, DC 20590-0001

- (b) Any firm denied DBE/ACDBE certification by the NUCP shall be eligible to reapply for certification one year after the date the firm received a written explanation of the reasons for denial.

E. Removal of DBE/ACDBE Eligibility

- (a) All matters of DBE/ACDBE certification eligibility and decertification in Nebraska will be reviewed and processed by the NDOT HCRO as the sole certifying agency of

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the NUCP. Any determination made by the NDOT HCRO will be the determination of the NUCP.

- (b) Once the NUCP has certified a DBE/ACDBE, it shall remain certified until and unless the NUCP has removed its certification, in whole or in part, through the procedures of [49 CFR Part 26.87, “What procedures does a recipient use to remove a DBE’s eligibility?”](#), except as provided under [49 CFR Part 26.67, “What rules determine social and economic disadvantage?”](#), specifically 49 CFR Part 26.67(b)(1).
- (c) Third-party complaints: A third party may file with the NUCP a written complaint alleging that a currently certified DBE/ACDBE firm is ineligible for certification and specifying the alleged reasons why the firm is ineligible.
 - (1) The confidentiality of a complainant’s identity will be protected as provided in 49 CFR 26.109(b).
 - (2) A third-party complaint may be submitted directly to the NDOT HCRO. Other Signatories receiving a third-party complaint will forward it to the NDOT HCRO within five (5) business days of receipt
 - (3) Third-party complaints will be reviewed and processed by the NUCP in accordance with the provisions of 49 CFR 26.87. The NUCP will provide written notice to the firm against which the third-party complaint has been filed.
 - (4) If the NUCP determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the NUCP will provide written notice to the firm of its intent to find the firm ineligible and decertify it, setting forth the reasons for the proposed determination. If the NUCP determines that such reasonable cause does not exist, the NUCP will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based. The complainant or firm may appeal the determination of the NUCP as provided in 49 CFR Part 26.89.
- (d) NUCP-initiated proceedings: If, based on notification by a firm of a change in its circumstances or other information that comes to the attention of the NUCP, it is determined there is reasonable cause to believe a currently certified firm is no longer eligible for certification, the NUCP will provide written notice to the firm of the intent to decertify it, setting forth the reasons for the proposed determination and referencing with specificity the evidence in the record on which each reason is based.
- (e) USDOT directive to initiate proceedings:
 - (1) If the concerned operating administration of the USDOT determines that information in the certification records of the NUCP, or other information available to the concerned operating administration, provides reasonable cause to believe that

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a currently certified firm does not meet DBE/ACDBE eligibility criteria, the concerned operating administration may direct the NUCP to initiate a proceeding to remove the firm's DBE/ACDBE certification as required by 49 CFR 26.87.

- (2) The concerned operating administration will provide the NUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information as required by 49 CFR 26.87.
- (3) The NUCP will immediately commence and prosecute a proceeding to remove the firm's DBE/ACDBE eligibility as provided by 49 CFR 26.87.

(f) Informal Hearing: When the NUCP notifies a firm that there is reasonable cause to remove its DBE/ACDBE eligibility, the firm will be given an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments why it should remain certified.

- (1) The hearing will be conducted in accordance with the provisions of 49 CFR 26.87.
- (2) The firm has 15 days from receipt of the notice of proposed removal of DBE/ACDBE eligibility to make the request for an informal hearing in writing to the NUCP. If the firm does not make a request for a hearing within this time, the decision by the NUCP to decertify the firm becomes administratively final.

(g) Appeal to USDOT: The firm and/or the complainant may appeal the NUCP final decision to the USDOT within 90 days of the date of the decision as provided in 49 CFR Part 26.89. The appeal must be made in writing to:

U. S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave. SE
Washington, DC 20590-0001

Pending a decision by the USDOT on the appeal, the decision by the NUCP remains in effect.

F. Reciprocity

(a) The NUCP may elect to enter into a written reciprocity agreement with a UCP in other state. The decision to execute such an agreement shall be made by a unanimous vote of the Signatories.

G. Non-disclosure/Confidentiality

(a) The NUCP will safeguard from disclosure to unauthorized persons all information gathered as part of the DBE/ACDBE certification process that may reasonably be

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regarded as confidential business information, consistent with applicable Federal, state, and local law. Notwithstanding any contrary provisions of Federal, state or local law, the NUCP will not release personal information submitted in response to the personal net worth requirements of [49 CFR Part 26.67, “What rules determine social and economic disadvantage?”](#) and [49 CFR Part 23.35, “What is the personal net worth standard for disadvantaged owners of ACDBEs?”](#) to a third party (other than USDOT) without the written consent of the submitter.

H. NUCP Contact Information

Any documents, information or questions regarding the NUCP and the DBE/ACDBE certification of or eligibility of a firm doing business in Nebraska may be submitted to the contact below.

NUCP Contact Information

NDOT HCRO

Troy Larsen, HCR Mgr.

1500 Hwy 2

P.O. Box 94759

Lincoln NE 68509-4759

Phone: (402) 479-4531

Fax: (402) 479-3728

E-mail: troy.larsen@nebraska.gov

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Nebraska UCP Signatory Partners

City of Grand Island

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln Airport Authority

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln Area Metropolitan Planning Organization

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln StarTran

Name: _____ Title: _____

Signature: _____ Date: _____

Omaha Airport Authority

Name: _____ Title: _____

Signature: _____ Date: _____

Omaha Metro Area Transit

Name: _____ Title: _____

Signature: _____ Date: _____

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Omaha-Council Bluffs Metropolitan Area Planning Agency

Name: _____ Title: _____

Signature: _____ Date: _____

Nebraska Department of Transportation

Name: _____ Title: _____

Signature: _____ Date: _____

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RESOLUTION 2018-110

WHEREAS, The City of Grand Island is the recipient of the United States Department of Transportation (USDOT) financial assistance, which includes Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA); and

WHEREAS, the Federal Transit Authority requires that all communities which receive these funds adopt a Disadvantaged Business Enterprise Plan; and

WHEREAS, on June 27, 2017, via Resolution No. 2017-183, Grand Island City Council approved the Disadvantaged Business Enterprise Plan for the City of Grand Island; and

WHEREAS, the State of Nebraska has established the Nebraska Unified Certification Program (NUCP) for Disadvantaged Business Enterprises Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA that the City of Grand Island, Nebraska hereby approves and adopts the Nebraska Unified Certification Program (NUCP) for Disadvantaged Business Enterprises Agreement.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to sign such agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 24, 2018.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 20, 2018	☐ City Attorney