



U.S. Department
of Transportation
**Federal Highway
Administration**

Louisiana Division Office

April 25, 2023

5304 Flanders Drive, Suite A
Baton Rouge, LA 70808
225-757-7600
225-757-7601(Fax)
louisiana.fhwa@dot.gov

In Reply Refer To:
HDA-LA

Eric Kalivoda, Ph.D.
Secretary
Louisiana Department of Transportation
and Development
Baton Rouge, LA

Subject: DBE Program Updates Approval

Attention: Ms. Paula Roddy, LDOTD

Dear Dr. Kalivoda:

The Louisiana Division of the Federal Highway Administration (FHWA) has received and reviewed the Department's current Disadvantaged Business Enterprise (DBE) Program submitted by Ms. Paula Roddy to our office on March 3, 2023. The revised DBE program encompasses the needed regulatory prompt payment modifications and plans to follow provisions under 49 CFR part 26.

Approval of this Disadvantaged Business Enterprise (DBE) Program document is hereby granted.

We appreciate all the hard work and commitment shown by Ms. Roddy and her staff in carrying out all the Department's Civil Rights programs. If you have any questions, please contact Mr. Charles Harkless, EEO/Realty Specialist at (225) 757-7621.

Sincerely yours,

Digitally signed by
CHARLES BOLINGER
Date: 2023.05.19 12:30:31
-05'00'

Charles W. Bolinger
Division Administrator

cc: Ms. Rhonda Wallace, LADOTD
Ms. Shirley Ard, LADOTD
Mr. Warren Morgan Jr., LADOTD
Ms. Keycha Alexander Green, LADOTD



Office of the Secretary
PO Box 94245 | Baton Rouge, LA 70804-9245
ph: 225-379-1200 | fx: 225-379-1851

John Bel Edwards, Governor
Shawn D. Wilson, Ph.D., Secretary

March 3, 2023

Mr. Wes Bolinger
Division Administrator
Federal Highway Administration
5304 Flanders Drive, Suite A
Baton Rouge, Louisiana 70808

Subject: LADOTD DBE Program Plan - UPDATE

Dear Mr. Bolinger:

Attached is the LADOTD DBE Program Plan which has been signed by Secretary Shawn Wilson, Ph.D. This is being sent for your review and approval.

The substantial change includes the following:

- Page 15-16, X. Prompt Payment Mechanisms (§26.29), change in language regarding sub-contractors (DBE or non-DBE) to refer only to DBE sub-contractors.

If you need additional information, please contact me at (225) 379-1382.

Sincerely,

A handwritten signature in blue ink that reads "Paula Merrick Roddy". The signature is fluid and cursive.

Paula Merrick Roddy
Compliance Programs Director

Enclosure

cc Rhonda Wallace, DBE Program Manager
Shirley Ard, DBE Program Specialist
Warren Morgan Jr., DBE Program Specialist
Keycha Alexander Green, DBE Program Specialist

DISADVANTAGED BUSINESS
ENTERPRISE PROGRAM



LOUISIANA DEPARTMENT OF
TRANSPORTATION & DEVELOPMENT

Louisiana Department of Transportation & Development
Submitted for approval March 3, 2023

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DBE PROGRAM

The Louisiana Department of Transportation and Development (LADOTD) is vested with the authority and responsibility to coordinate and develop a comprehensive, balanced transportation system for the State of Louisiana. In order to carry out those responsibilities, LADOTD is authorized to make such contracts and execute such instruments containing reasonable and necessary terms, provisions, and conditions for the purpose of obtaining or securing financial assistance, grants or loans from any agency or department of the United States.

In addition to funding from various resources of the State of Louisiana, LADOTD receives funding from the United States Department of Transportation (DOT). As a condition of receiving such funds, LADOTD must comply with all federal statutes, regulations, guidelines and other requirements of the federal agencies.

LADOTD is required to establish a three (3) year overall goal based on the local availability of DBEs that are ready, willing, and able to participate in LADOTD contracts. It is required that, to the maximum extent possible, race-neutral means be used to achieve the DBE participation goals. In addition, changes reflecting the newly revised federal regulation that became effective October 2, 2014, have been included.

DBE PROGRAM

I. Objectives /Policy Statement (§26.1, §26.23)

As a recipient of DOT federal funding, the LADOTD is required to administer a Disadvantaged Business Enterprise (DBE) program in compliance with all laws, regulations, executive orders, and guidance. Therefore, a DBE Program is established as set forth herein and LADOTD hereby provides its assurance that it will comply with the provisions of this program and DOT regulations as set forth in 49 CFR Part 26.

The LADOTD is committed to the objectives of the DBE Program and its policy is to fully support and comply with 49 CFR Part 26 and all other applicable statutes, regulations and guidelines of DOT. In order to achieve these goals, it is the policy of LADOTD to:

- a) Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- b) Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c) Ensure that the Department's DBE Program is narrowly tailored in accordance with Applicable law;
- d) Ensure that only firms that fully meet 49 CFR Part 26's eligibility standards are permitted to participate as DBEs;
- e) Help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f) Promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
- g) Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
- h) Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs

The responsibility for the effective implementation is assigned to the Director of the Compliance Programs Section, who is also designated as the DBE Liaison Officer (DBELO). The DBELO reports directly to the Deputy Secretary of LADOTD, and has full responsibility for developing, managing and implementing all aspects of the DBE program on a day-to-day basis, which includes providing guidance and oversight to the LADOTD highway, transit and aviation activities in regards to the DBE Program. The DBELO also has responsibility for ensuring that the technical assistance activities for DBEs are carried out; and for ensuring that information on available business opportunities is disseminated so that DBEs are provided an opportunity to bid on all federally assisted LADOTD contracts and other opportunities. This arrangement, however, does not preclude the DBELO from having direct, independent access to the LADOTD Secretary.

LADOTD has established a Certification Review Team to certify eligible DBEs as required by 49 CFR Part 26 to participate in federally assisted contracts, Certified DBEs will be included in a DBE directory.

The DBE program and policy statement are available to all District Administrators, District Construction Engineers, Project Engineers, and other Department officials on the agency website at www.dotd.la.gov calling for effective implementation and monitoring. The DBE program manual is available to the female, non-minority, and business communities on the agency website or in bound form. The manual is also made available to all airport sponsors, political jurisdictions, and any other interested parties. The DBE Program Manual will be updated and approved by FHWA when there have been significant changes to the current approved plan and will be made available via the Department's website or in bound form.



Shawn D. Wilson, Ph.D.
Secretary, LADOTD

Date: 02/27/2023

II. Definition of Terms (§26.5)

The terms used in this program have the meanings defined in 49 CFR 26.5. In the administration of its DBE Program, LADOTD will act in accordance with guidance and interpretations when issued by DOT in accordance with 49 CFR 26.9.

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.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or Other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part. the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or 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.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts mean 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 requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principle place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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 serv-

ices 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, and 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.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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 that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: The Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), The "Administrator" of an operating administration includes his or her designees.

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 or participating 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 own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>

Primary recipient means a recipient which receives DOT financial assistance and passes 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. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance,

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SOB programs. ***Small business concern means***, with respect to firms seeking to participate as DBEs in DOT-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) that also does not exceed the cap on average annual gross receipts specified in §26.65 (b)

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) Of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities, the social disadvantage must stem from circumstances beyond the individual's control.

- 1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis, an individual must demonstrate that he or she has held himself or herself out. as a member of a designated group if you require it.
- 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 enrolled members of a federally or State recognized Indian tribe, Alaska Natives, 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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji Tonga, Kiribati, Tuvalu, 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.

3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes.

Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

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

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

Definitions and acronyms relative to the LADOTD:

CP-2A Form is the final DBE subcontractor payment form

CS-6AAA Form is the DBE commitment form that must be submitted and approved after the bid letting

EDSM means Engineering Directives and Standards Manual

LADOTD means Louisiana Department of Transportation and Development

LADOTD-NO means Louisiana Department of Transportation and Development- New Orleans Office

LANOIA means Louis Armstrong New Orleans International Airport

LAUCP means Louisiana Unified Certification Program NORTA means New Orleans Regional Transit Authority

OMF-IA Form is the subcontractor request form

OMF-2A Form is the EEO certification required to accompany the OMF-IA form on all federally funded projects for subcontracts \$10,000 or more

Small Business Enterprise (SBE) - This refers to a for-profit business that is at least 51% owned by one or more individuals who are economically disadvantaged, and whose company meets the small business concern definition §26.39

III. Nondiscrimination (§26.7)

LADOTD 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, LADOTD 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.

IV. Records LADOTD Will Keep and Report (§26.11)

Uniform Report

LADOTD hereby commits to submit the Uniform Report of DBE Awards or Commitments and Payments on June 1 and December 1 annually. Reports will be timely and accurately presented in the proper format to FHWA, Hard copies of the reports are maintained in the LADOTD Compliance Programs Section.

Bidders List

As a means of determining the relative availability of ready, willing, and able DBEs, LADOTD will maintain a Bidders' List that will include all firms that bid on prime contracts or quote sub-contracts on DOT financially assisted projects. The purpose of this requirement is to allow use of the Bidder's List approach in calculating overall goals. The list will include both DBEs and non-DBEs. The list will be supplemented on a regular basis and will include the following information:

- (1) Firm name
- (2) Firm address
- (3) Firm's status as a DBE or non-DBE
- (4) Age of the firm
- (5) The annual gross receipts of the firm

All bidders will provide basic information that includes the name of the firm, a contact person, an address, and an e-mail address or telephone number of any subcontractor or supplier that submits a quote to them. A list of firms is provided on line at http://wwwapps.dotd.la.gov/engineering/lettings/ready_willing_able.aspx and only firms not already on this list need to be submitted. This will be used to determine all firms that are ready, willing, and able to perform work on projects financially assisted by the DOT. LADOTD will follow up on a yearly basis to verify the information above and obtain additional information that includes the age of the firm and gross receipts.

Monitoring Payments to DBEs

LADOTD will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the LADOTD or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Maintain/Retain Records of Certified Firms

LADOTD will indefinitely retain application packages for each certified DBE/SBE, including: Affidavits of No Change; changes submitted by the firm; onsite reports and any supporting documentation. Records of inactive firms will be retained for five (5) years in the Compliance Programs Section. After such time they will be retained for five (5) years in microfilm and then scanned, to be permanently retained electronically. All information is stored in locked filing cabinets in order to ensure confidentiality.

Provide UCP Information

LADOTD commits to provide the DOT's Office of Civil Rights, by January of each year, the percentage and location in the State of certified DBE firms in the IJCP Directory controlled by: (1) women, (2) socially and economically disadvantaged individuals; and (3) individuals who are women and are otherwise socially and economically disadvantaged individuals.

V. Federal Financial Assistance Agreement Assurance (§26.13)

49 CFR 26.13 provides;

- (a) Each financial assistance agreement signed with a DOT operating administration (or a primary recipient) must include the following assurance: LADOTD 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 49 CFR Part 26. LADOTD shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. LADOTD'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 LADOTD of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C, 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).
- (b) Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

VI. DBE Program Updates (§26.21)

LADOTD's DBE Program Plan will be updated and approved by FHWA and DOT when there have been significant changes to the current approved Plan. All LADOTD sub-recipients of FHWA funds must comply with the LADOTD DBE Program Plan and may not have a plan independent from LADOTD. LADOTD will continue to carry out this program until all funds from the DOT financial assistance are expended.

VII. LADOTD's Policy Concerning This DBE Program (§26.23)

LADOTD is committed to the objectives of the DBE Program and it is its policy to fully support and comply with 49 CFR Part 26 and all other applicable statutes, regulations, and guidelines of the DOT. It is the policy of LADOTD to provide a level playing field, to foster equal opportunity in all DOT-assisted contracts, to improve the flexibility of the DBE Program, to reduce the burdens on small businesses, and to achieve an amount of participation that would be obtained in a non-discriminatory market place. It is the policy of LADOTD that there will be no discrimination in the award and performance of federally assisted contracts on the basis of race, color, sex, or national origin.

VIII. DBE Liaison Officer (§26.25)

LADOTD has designated an employee within the Office of Civil Rights as the DBE Liaison Officer (DBELO):

**Compliance Programs Director
Louisiana Department of Transportation and Development
P.O. Box 94245
Baton Rouge, LA 70804-9245
Telephone: (225) 379-1382
Fax: (225) 379-1865**

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that LADOTD complies with all provisions of 49 CFR Part 26. The DBELO reports directly to the Deputy Secretary of LADOTD, however this does not preclude the DBELO from having direct, independent access to the LADOTD Secretary concerning all DBE matters. The DBELO will have adequate staff to implement, administer, and monitor the DBE Program.

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

- 1. Gather and report statistical data and other information as required by the DOT.**
- 2. Identify contracts and procurements so that DBE goals are included in solicitations and monitors results.**
- 3. Analyze program progress toward goal attainment and identify ways to improve progress.**
- 4. Participate in pre-bid meetings and advise the Deputy Secretary on DBE matters and achievement.**
- 5. Participate with the DBE Oversight Committee to determine contractor compliance with good faith efforts.**
- 6. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.**
- 7. Plan and participate in DBE training seminars.**
- 8. Act as liaison to the Uniform Certification Program in the State of Louisiana.**
- 9. Provide outreach to DBEs and community organizations to advise them of opportunities.**
- 10. Maintain the updated LADOTD directory on certified DBEs.**
- 11. And such Other duties as imposed by the Secretary of LADOTD.**

As part of LADOTD's policy to support and encourage the DBE Program, the Liaison Officer will make available a copy Of the DBE Policy and the DBE Directory to all LADOTD Districts and Divisions, highway construction contractors of the State of Louisiana, manufacturers of products used in the highway construction industry, public transit contractors within the State of Louisiana, all contractors listed on LADOTD's "Notice to Bidders." certified DBEs in Louisiana, Planning Districts within the State of Louisiana, municipalities and parishes Of this state, various

associations that represent contractors in the highway construction and public transit industry, and any other agency, business, or individual upon request, These documents may be obtained via our website at www.dotd.la.gov.

X. DBE Financial Institutions (§26.27)

It is the policy of LADOTD to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions and encourage prime contractors on DOT-assisted contracts to use these institutions, LADOTD has thoroughly investigated the full extent of services offered by banks owned and controlled by socially and economically disadvantaged individuals in the community. Based on a recent search, there is currently one minority owned and controlled bank in the State of Louisiana:

Liberty Bank & Trust Co.,
6600 Plaza Dr. - Suite 600
New Orleans, LA 70127

LADOTD will continue to investigate any new DBE banks established in Louisiana and use their services when feasible. LADOTD will provide the following notification to each prime contractor who will perform on a DOT-assisted project "The contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial." This statement is found in the attached Required Contract Provisions for DBE participation in Federal Aid Construction Contracts, Part C.

X. Prompt Payment Mechanisms (§26.29)

LADOTD requires that all DBE subcontractors performing work on DOT-assisted contracts be promptly paid for work performed. To comply with 49 CFR §26.29, LADOTD requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than thirty (30) days from the prime contractor's receipt of each payment from the LADOTD. In compliance with this requirement, LADOTD will decline to hold retainage from prime contractors for work performed by DBE subcontractors, and prohibit prime contractors from holding retainage from DBE subcontractors.

For purposes of this section, a subcontractor's work is satisfactorily completed when the subcontractor has performed work on a DOTD project that has been submitted by the prime contractor to DOTD for payment, and DOTD has approved and paid the prime contractor for said work.

LADOTD monitors DBE subcontractor payments through the Civil Rights & Labor Software (CR&L) by running reports monthly to ensure that DBE subcontractor payments are being submitted with each estimate. The Prime Contractor must enter the payment amount made to DBE subcontractor(s) on each project with each monthly estimate before the Project Engineer will generate a new estimate. Once the payments are entered by the prime contractor, the DBE is notified via email and must review *and* approve the payment. The Project Engineer then verifies that the DBE performed the listed work during the reporting period for the previous month, and that the amount paid is commensurate with the commitment amount. The Compliance Programs Section will also randomly select DBE subcontractors to review for

compliance with the prompt payment policy and any other DBE policies/requirements.

The Compliance Programs Section will ensure all DBE subcontractors are paid promptly by collecting and reviewing invoices submitted by a DBE in conjunction with proof of payment from a financial institution, including, but not limited to, corresponding cancelled checks, bank statements, or other records of electronic funds transfer. A written or typed document prepared by a prime contractor or subcontractor will not be accepted. All payments must be consistent with the dollar values on the CS-6AAA form and the monthly payment entries provided in AASHTOWare.

If a DBE sub-contractor has not been paid within the specified time limits, it can submit a complaint online at: <http://wwwapps2.dotd.la.gov/Administration/SPPComplaint/>

A running tally of complaints are monitored, and handled upon receipt by the Compliance Programs Section. If a prompt payment complaint is found to be valid, the LADOTD may utilize contractual provisions to hold future estimates until payments are made, disqualify the prime contractor from bidding on future projects, deduct from the contract funds due, deduct from the future funds due to the contractor, or undertake any other remedy deemed appropriate by LADOTD.

Retaliation against a DBE subcontractor for submitting a prompt payment complaint is strictly prohibited.

Those Prime Contractors that do not comply with these prompt payment guidelines will be sent a warning email informing them of their non-compliance and possible sanctions by LADOTD. If the non-compliance continues, the Compliance Programs Section will have a meeting with the Chief Engineer and after a decision is made by the Chief Engineer, the Prime Contractor will be contacted.

DBE subcontractors will be allowed to withdraw/dismiss the prompt payment complaint for the following reasons:

- The Subcontractor has been paid - The DOTD Compliance Section must receive written notification from the Subcontractor that they have received payment that satisfies the disputed amount.
- The prime contractor has not received payment from the LADOTD - Verified through an investigation by the DOTD Compliance Section.
- The pay estimate has not been approved by the Project Engineer - Verified through an investigation by the DOTD Compliance Section.
- The Subcontractor was not approved to perform work on the project - The DOTD Compliance Section did not receive a signed Request to Sublet-Form OMF-IA.
- The complaint was a duplication - Verified through an investigation by the DOTD Compliance Section.
- A request is made by the Attorney of record for the Subcontractor - The DOTD Compliance Section must receive written notification from the Attorney.

XI. DBE Directory (§26.31)

To assist interested firms in identifying certified DBEs, LADOTD presently maintains the Louisiana Unified Certification Program (UCP) DBE Directory that identifies all firms certified as being eligible to participate as DBEs in LADOTD's DBE Program. The listing for each firm includes its address, phone number, and the types of work the firms are certified to perform as a DBE.

LADOTD revises its Directory monthly and makes updated information available to contractors and the public on our LADOTD website (www.DOTD.la.gov) or by contacting LADOTD's Compliance Programs Section at (225) 379-1382. LADOTD has adopted and participates in the Louisiana UCP as described in 49 CFR 26.81. A Louisiana UCP DBE Application form is also available on the LADOTD website or a paper copy may be requested from the Compliance Programs at the aforementioned phone number. The application can be found at <http://www.dotd.la.gov/ucp/>

XII. Over Concentration of DBEs in Certain Types of Work (§26.33)

LADOTD through its Supportive Services Consultant provided surveys to all certified DBEs to gather current information. This included information relative to overconcentration. This survey is continually disseminated to our newly certified DBE's through the "Welcome Package" developed by the consultant. The information derived from these surveys is compiled by the consultant and submitted through progress reports to LADOTD for review. LADOTD has not determined that DBE firms are so over concentrated in a certain type of work area as to unduly burden the opportunity of non-DBE firms in that type of work. These reports will be monitored on a semi-annual basis. Upon discovery and identification of overconcentration, LADOTD will use appropriate business development strategies to increase expertise of those DBE firms in additional work areas. LADOTD will submit determination factors and solutions for overconcentration to its operating administration for approval and no corrective action will be used until approved by the DOT. If such approval is obtained, the measures will become a part of LADOTD's DBE Program. It is not the intention of LADOTD to establish or use a mentor-protégé program at this time.

XIII. Monitoring Responsibilities (§26.37)

LADOTD implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26's requirements by all program participants, including but not limited to prompt payment. These mechanisms are described and set forth in LADOTD's DBE Program.

Monitoring Payments

LADOTD undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished by ensuring that the prime contractor enters the payment amount to DBE subcontractor(s) on each project with each estimate (monthly), starting with number 2, This must be done before the Project Engineer will generate a new estimate. This process is automated through CR&L. Once the payments are entered by the prime contractor, the DBE is notified via email and must review and approve the payment. The Project Engineer then verifies that the DBEs performed the listed work during the previous month's reporting period and the amount paid is commensurate with the commitment amount. The final step consists of the Compliance Programs Section signing off on the payment

entry. Failure to submit the required reports will result in the withholding payments to the contractor until the reports are submitted. Reports are required regardless of whether or not DBE activity has occurred in the monthly reporting period.

LADOTD monitors DBE Subcontractor Payments through CR&L software by running monthly reports to ensure that DBE Subcontractor Payments are being submitted on a monthly basis with each estimate. The Compliance Programs Office will also randomly select DBE subcontractors to review for compliance with Prompt Payment policy and other DBE requirements. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to LADOTD by the prime contractor.

Upon completion of all DBE payments, the contractor must submit a notarized original CP-2A Form (DBE final report) to the LADOTD Compliance Programs Section. This form details the total of all DBE subcontractor payments made throughout the project. When the actual amount paid to DBE is less than the award amount, a complete explanation is required. If the DBE goal is not met and the explanation submitted does not justify waiving the unmet portion of the goal, an amount equal to the unmet portion may be withheld from payment due to the contractor.

LADOTD reserves the right to conduct an audit of DBE participation prior to processing the final estimate and at any time during the work. LADOTD requires prime contractors to provide payment records and subcontracts when requested.

LADOTD proactively reviews contract payments to subcontractors, including DBEs, by reviewing a monthly report. Payment reviews will evaluate if payments were made before the thirty (30) day allowable timeframe.

Prompt Payment Dispute Resolution

LADOTD will take the following steps to resolve disputes regarding whether work has been satisfactorily completed for purposes of 49 CFR Part 26.29.

The Project Engineer will meet with the subcontractor and contractor if there is a dispute as to whether or not LADOTD will accept the work. Acceptance of work by the Project Engineer will justify satisfactorily completed work.

Prompt Payment Complaints

Complaints by subcontractors, including DBEs, regarding the prompt payment requirements must be submitted to LADOTD through the online process found at: <http://wwwapps2dotd.la.gov/Administration/SPPComplaint/>

The complainant can request the complaint be kept confidential. A running tally of complaints is monitored and handled upon receipt by the Compliance Programs Section.

Enforcement Action for Non-Compliance of Participants

If the prompt payment complaint is found to be valid, LADOTD may hold future estimates until payments are made, disqualify the Prime Contractor from bidding on future projects, deduct from the contract funds due or future funds due to the contractor, or other such remedy as LADOTD deems appropriate. Retaliation against a subcontractor for submitting a prompt payment complaint is strictly prohibited. Acceptance of work by the Project Engineer will justify satisfactorily completed work.

Those Prime Contractors that do not comply with these prompt payment guidelines will be sent a warning email informing them of their non-compliance and possible sanctions by LADOTD.

LADOTD will measure payments actually made to DBEs as well as commitments made prior to award of federally assisted contracts. Credit towards DBE goals will be given to contractors only when payments are made to Louisiana UCP certified DBEs. LADOTD will also keep a running tally on each federally assisted contract of the extent to which performance matches the commitment made by the prime contractor. This information is maintained in the AASHTOWare CR&L system, which tracks both monthly and year-to-date payments. Prime contractors are required to make available all DBE subcontracts and LADOTD will select subcontracts on random projects to review for compliance with all assurances stated in 49 CFR Part 26. LADOTD tracks and monitors race-conscious vs. race-neutral participation through CR&L. The system is also tracking the state/federal funding split on contracts to ensure that only the federal share is being reported on the semi-annual Uniform Reports.

XIV. FOSTERING SMALL BUSINESS PARTICIPATION (§26.39)

In accordance with 49 CFR 26.39, LADOTD has developed the following plan to facilitate competition by small business concerns in contracting opportunities with LADOTD. This plan requires certification of small businesses to better ensure a level playing field.

Method to Facilitate Competition

Currently the LADOTD establishes DBE contract goals on DOT assisted contracts over \$500,000. In accordance with 49 CFR 26.39, to facilitate SSE competition, LADOTD will establish SBE goals on FHWA assisted contracts that are between \$150,000 and \$500,000. The method used to establish SBE goals will be the same process followed in establishing DBE goals. A DBE/SBE Goal Committee will review and evaluate the scope of work and location of each project. The directory of SBE certified firms will be reviewed to determine availability and a goal will be assigned should it be determined the project can support one. LADOTD will advertise and post on our website each project and specify the SBE goal percentage.

Outreach

Ensures easy and direct access to the SBE program information through website and other electronic and print media.

Promote awareness of the SBE program at trade fairs, workshops, conferences, etc.

- Forge partnerships with industry groups, such as the Louisiana Associated General Contractors, to assist with the dissemination of information on opportunities for small businesses.

Certification

LADOTD Compliance Programs Section, SBE Certification Unit certifies businesses as SBEs in accordance with 49 CFR 26.65 through an application process. The Louisiana UCP application for DBE certification was revised to exclude any reference to and/or presumption of social disadvantage based on race and/or gender and used as the SBE application. The application can be found at the following:

[http://wwwsp.dotd.la.gov/Inside LaDOTD/Division/Administration/Compliance/Pages/SBE Certification.aspx](http://wwwsp.dotd.la.gov/Inside%20LaDOTD/Division/Administration/Compliance/Pages/SBE%20Certification.aspx)

Additionally, SBE certification includes provisions of Federal Regulation 49 CFR 26.67 (2) (i), which establishes a Personal Net Worth threshold of \$1.32 million for the individual owner of the business seeking certification. The SBE application process is the same procedure followed for the DBE application process as it relates to documentation requirements necessary to determine the applicable size standards. An annual affidavit, with supporting documents, will be required each year for certified SBEs to verify continued eligibility.

Monitoring and Tracking

For each project that is assigned a SBE goal, contract specifications are included as part of the contract. The monitoring and tracking process for SBE's awarded SBE goal projects, as a prime or a subcontractor, is the same process LADOTD utilizes for DBE monitoring and tracking.

Directory

A separate directory of SBE firms is maintained and made available on LADOTD'S website. All available contact information is provided on each certified SBE. All certified DBE's in the LACUP have already been determined they meet the economically disadvantaged and small business concern definitions so each certified DBE will automatically be certified as SBE's after providing a two (2) page affidavit requesting the certification.

XV. Quotas (§26.43)

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

XVI. Establishment of LADOTD's Goals for DBE Participation (§26.45)

LADOTD is required to set and establish an overall goal for DBE participation in DOT-assisted contract. The state goal is expressed as a percentage of the total payments to prime contractors and subcontractors performing on DOT-assisted contracts. This overall goal is based on evidence of the availability of ready willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts.

The DOT requires a two-step process for setting the annual DBE goal. The first step is to establish a base figure for the relative availability of DBEs. The second step is to adjust the base figure in order to determine a realistic overall goal. LADOTD maintains a comprehensive Bidders List that includes all firms who have shown an interest in bidding as contractors or subcontractors on federally assisted projects. Public consultation forums are held to give all interested parties an opportunity to pose questions and raise issues for discussion, as well as being actively involved in our goal setting process.

In setting the base figure, LADOTD will rely on information with respect to the relative number of bids or quotes submitted by DBEs on past DOT-assisted prime contracts or subcontracts over the federal fiscal year. Minimally, the relative number of DBE bids or quotes will be examined at the following level of detail: prime and subcontracts, trucking and supplier contracts, engineering design contracts and subcontracts. consultant and other professional services contracts and subcontracts. Only DBEs with current certification will be counted as available DBEs. An overall base figure will be determined by weighing DBE availability in these work segments by the amount of contract dollars going to each segment on past DOT-assisted contracts.

In adjusting the base figure, LADOTD will minimally consider: past utilization of DBEs on state-funded contracts, past utilization of DBEs on DOT-assisted contracts, any future changes in the

volume and distribution of contract dollars by segment of work, potential DBE contractors who may not qualify for recertification and other factors as outlined in 49 CFR Part 26.

LADOTD will, to the fullest extent possible, meet its overall goal through race-neutral means by facilitating DBE participation. Race neutral measures may include designing the contracting processes to encourage small business participation, providing assistance in obtaining bonding and financing; providing technical assistance, widely distributing information on contract opportunities and available firms, implementing in-house supportive services as well as contracting with outside professional service providers to enhance business management of small businesses.

When race-neutral measures are not totally effective in meeting the annual goal, LADOTD will institute the race-conscious measure of establishing contract goals on specific prime contracts with subcontracting possibilities (opportunities). The bidder must meet, exceed or demonstrate that he/she could not meet despite best efforts.

LADOTD will establish a three (3) year overall DBE goal for each agency as required. The goal will be submitted to the FHWA or appropriate agency by August 1, every three (3) years, for its review and approval. The Goal and Methodology is due August 1, 2016, and every three (3) years following that date.

A notice announcing the proposed goal(s) and rationale will be published and made available for inspection during normal business hours in the first floor lobby of LADOTD'S Headquarters Building and on our website for thirty (30) days following the date of the notice. Notice will also be given to the public that comments on the state goal will be accepted for thirty (30) days from the date of notice. The notice will include addresses to which comments may be sent. The notice will be published via general circulation media and available minority focused media. Public meetings will be conducted in two (2) regions of the state, and overall DBE goal(s) may be adjusted based on public meetings. If adjustments are made, the goal will be republished and the public meetings will be held again.

The Department's goal is designed to achieve a consistent DBE involvement throughout the state rather than in a selected geographic concentration throughout the year, and according to the availability of DBEs response to solicitation.

The assignment of contract goals, the commitments of bidders to utilize DBEs, and the contractor's fulfillment of goal commitments are carefully monitored by the Compliance Programs Section to assess progress toward goal achievement and, if necessary, to modify procedures and/or goal-setting methodology. LADOTD commits to submit a shortfall analysis if the DBE goal is not achieved annually.

XVII. Means LADOTD Will Use to Meet its Overall Goals (§26.51)

LADOTD will meet the maximum feasible portion of its overall goal by using race-neutral means to facilitate DBE participation. For the purposes of this program, race-neutral includes gender neutrality. Race and gender-neutral DBE participation includes any situation in which a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, and/or did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts), and an award of a subcontract or a prime contract to a SBE firm that is also DBE certified.

Race-neutral means include, but are not limited to, the following:

- 1. Arranging solicitations, times for the presentation of bids, quantities specifications, and delivery schedules in ways that facilitate participation by DBEs, and other small businesses;**
- 2. Providing technical assistance and other services;**
- 3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;**
- 4. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;**
- 5. Providing services to help DBEs and other small businesses improve long-term development;**
- 6. Ensuring distribution of the LADOTD DBE Directory to the widest feasible universe of potential prime contractors;**
- 7. Assisting DBEs, and Other small businesses, to develop their capability to utilize emerging technology.**

LADOTD will establish contract goals to meet any portion of its overall goal it does not project being able to meet using race-neutral means.

The following provisions apply to the use of contract goals, including design-build projects:

- 1. LADOTD will establish contract goals only for those DOT-assisted contracts that have subcontracting possibilities.**
- 2. LADOTD may not set a contract goal on every DOT-assisted contract. However, over the period covered by its overall goal, LADOTD will set contract goals so that they will cumulatively result in meeting any portion of its overall goal it does not project being able to meet through the use of race-neutral means.**
- 3. LADOTDs contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.**

To ensure that its DBE Program continues to be narrowly tailored to overcome the effects of discrimination. LADOTD will adjust the use of contract goals in accordance with the procedures and examples as set forth in 49 CFR 26.51.

DBE Goal Setting

LADOTD establishes DBE contract goals on DOT-assisted construction contracts over \$500,000. A DBE/SBE Goal Committee will review and evaluate the scope of work and location of each project. The directory of DBE certified firms will be reviewed to determine availability and a goal will be assigned should it be determined the project can support one. LADOTD will advertise and post on our website each project and specify the DBE goal percentage.

The DBE/SBE Goal Committee consists of: Contracts & Specifications Engineer (Chairperson), Chief Engineer or Designee, Chief of Construction or Designee, DBE/SBE Program Manager, Labor Compliance Program Manager, Compliance Programs Director, FHWA Civil Rights Specialist.

XVIII. Good Faith Efforts (§26.53)

When LADOTD has established a DBE contract goal, it will award the contract only to a bidder who makes good faith efforts to meet it. LADOTD will determine that a bidder has made good faith efforts if the bidder does either of the following things:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder does document adequate good faith efforts, LADOTD will not deny award of the contract on the basis that the bidder failed to meet the goal.
3. If the bidder does not meet the contract goal, the evidence of all good faith efforts must be submitted along with the CS-6AAA, Bidders Assurance of DBE Participation, within five (5) calendar days after the letting. Any decision as to the adequacy of good faith effort will be considered in accordance with the guidance outlined in Appendix A to 49 CFR Part 26 —Guidance Concerning Good Faith Efforts for Determining the Adequacy of a Bidder's Good Faith Efforts.

For design build projects, if the proposer does not meet the contract goal, the evidence of all good faith efforts must be submitted along with the CS-6AAA, Bidders Assurance of DBE Participation, within forty-five (45) days of a DBE subcontractor starting work on the project. Any decision as to the adequacy of good faith effort will be considered in accordance with the guidance outlined in Appendix A to 49 CFR Part 26, Guidance Concerning Good Faith Efforts for Determining the Adequacy of a Bidder's Good Faith Efforts.

4. Before transmitting a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to LADOTD of its intent to request to terminate and/or substitute, and the reason for the request.
5. The Prime Contractor must give the DBE five (5) days to respond to the notice and advise LADOTD and the contractor of the reasons if any, why it objects to the proposed termination of its subcontract and why LADOTD should not approve the prime contractor's action.
6. In addition to post award terminations, the provisions in §26.53 apply to pre-award deletions of or substitutions for DBE firms put forward by offers in negotiated procurements.

Information to be Submitted

Construction Contracts

All apparent low responsive bidder(s) will be required to submit the following information prior to LADOTD committing to the award of the contract:

1. Names and contact information of DBE firms that will participate the contract;
2. Description of the work that each DBE will perform;
3. Dollar amount of the participation of each DBE firm participating;
4. DBE Subcontracts upon request

For design build projects, the information must be submitted at least forty-five (45) days prior to each DBE beginning work on the project for construction projects, the information must be submitted within five (5) calendar days of the opening of the bid.

The CS-6AAA with signatures of the prime contractor and the DBE firm serves as written documentation of the bidder's commitment to use a DBE subcontractor to meet a contract goal. It also is further verification that the DBE subcontractor is aware of the prime contractor's commitment to use the firm toward a DBE contract goal.

These provisions are applicable to all bidders including DBEs. Since prime contractors, including DBEs are required to perform at least fifty (50) percent of the work of the contract. All work to be performed by the DBE prime may be listed on the CS-6AAA provided performance is in accordance with the terms of the contract, normal industry practices, and the LADOTD DBE Program. If a DBE is selected as the Prime Contractor on a DBE Goal Project, all items in which they are certified as a DBE to perform will count towards Race-Neutral. When DBE prime contractors sublet any portion of the contract, they shall comply with provisions regarding contractor and subcontractor relationships. LADOTD will count toward the goal only work a DBE prime contractor actually performs or any work performed by Other certified DBE subcontractors, provided a Commercially Useful Function ("CUF") is performed. This calculation is tracked electronically by the LADOTD computer system.

If the contract goal is not met, the bidder must provide documentation of good faith efforts at the same time the CS-6AAA is submitted. The LADOTD will make sure all information is complete, accurate and demonstrates adequate good faith efforts before awarding a contract to the bidder. In order for firms to be deemed eligible to be listed on the CS6AAA or good faith efforts, they must have been certified in the appropriate items at the time the construction project is advertised.

If the good faith efforts submitted with the bid are deemed insufficient, the Compliance Programs Director will recommend that the Contract Services Administrator reject the bid. If the bid is rejected, the decision is subject to an appeal by the bidder. The request shall be made in writing and should provide documentation or arguments concerning the issue of adequate good faith efforts. The DBE Oversight Committee will hear the appeal. The bidder will have the opportunity to meet in person with the Committee to discuss the issues leading to bid rejection. An attorney who is versed in DBE matters will be available to provide input, and a final recommendation will be made to the Reconsideration Official by the DBE Oversight Committee.

Administrative Reconsideration

The Reconsideration Official shall be LADOTD's Chief Engineer, who will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The bidder will be provided 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 Reconsideration Official's decision is not administratively appealable to the DOT.

Good Faith Efforts when a DBE is replaced on a contract

LADOTD 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. LADOTD 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, LADOTD will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the DBE Contract Administration Manager will make a recommendation to have all or partial payment withheld until satisfactory action has been taken. If the contractor still fails to comply, LADOTD may issue a notice of default.

Engineering Consultant Contracts

The LADOTD's Consultant Contract Services Section is using the following procedure to review contracts that are being advertised for applicability of goals.

The Goal Setting Process

Contracts that are greater than or equal to \$250,000 are reviewed for goals. The proposed advertisement is sent to the Compliance Programs Section and the DBE Program Manager identifies the work types available for sub-consultants. The number of available DBE firm/firms with specialties in the identified work categories in the project area are identified. All pertinent information is presented to the evaluation committee, who will discuss the projects, and set the goal for the contract. The matrix for initial project selection will include the following:

DBE available by area

DBE specialties

Breakdown of project by percentage of work type

Cost of project

The Engineering DBE Goal Committee is composed of the Consultant Contract Engineer, a Compliance Programs Section representative, a representative from Design / Project Manager, a FHWA Area Engineer, and the Project Development Division Chief. The Consultant Contract Engineer will serve as chairperson, and Compliance Programs Section will provide information on DBE firms and support goal while the FHWA Area Engineer support provides input of the area they oversee as it relates to the DBE goal. The representative from Design / Project Man-

ager is rotational (project specific to provide detailed breakdown of possible tasks to be performed by a DBE) and the Project Development Division Chief provides knowledge, consistency, and guidance for project development.

Eligibility

In order for small disadvantaged firms, including those owned by minorities and women, to participate in the DBE program they must apply for and receive certification as a DBE, The firms should contact the LADOTD Compliance Programs Section if further information on certification is required, a complete list of those firms registered as DBEs with their specialties can be found on the LAUCP website, Construction Letting Information page, or by contacting the Consultant Contracts Section at (225) 379-1989.

Engineering DBE Program Expectations

The prime consultant must demonstrate the goal will be met or exceeded, and provide the name of the DBE firm(s) they intend to use to meet the goal or submit documentation of good faith efforts to meet the goal.

Good Faith Efforts

The prime consultant should provide written notice to all certified DBEs who have capabilities pertinent to the work of the contract that their interest in the contract is being solicited. This notice shall be in sufficient time to allow the DBEs to respond to the written solicitation and should include follow-up of initial solicitations of interest by contacting DBEs to determine with certainty whether they were interested. Selecting portions of the work to be performed by DBEs will increase the likelihood of the DBE goals being achieved. This may include breaking down contracts into economically feasible units to facilitate DBE participation. The prime should provide interested DBEs with adequate information about the scope and requirements of the contract. Negotiations with interested DBEs should be documented and include the names, addresses, and telephone numbers of the DBEs considered. and should also include a description of the information provided, and a statement as to why additional agreements could not be reached for DBEs to perform the work. A prime consultant cannot reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

Engineering DBE Program Commercially Useful Function

A DBE's role cannot be limited to that of an extra participant in a project through which funds are passed in order to obtain the appearance of DBE participation. When a DBE is presumed not to be performing a commercially useful function the DBE may present evidence to rebut this presumption. DBEs are required to furnish all supervision and labor necessary to perform tasks prescribed in the contract, and must manage the work that has been contracted including scheduling work operations, preparing and submitting payrolls and all required reports and forms, hiring and firing employees including supervisory positions, The DBE must perform the work of the contract with his/her own forces, with no formal or informal constraints placed upon the DBE by the prime consultant to require the DBE to use employees Of the prime consultant or any other consulting firm to perform the work. Use by a DBE of personnel from other consultants will not satisfy the requirement.

Termination/Replacement of DBE

A prime cannot terminate a DBE sub-consultant and self-perform the work without prior written approval from Compliance Programs Section and Consultant Contract Services. DBEs can be replaced only if they are unable or unwilling to perform. If it appears that the DBE goal cannot be achieved, the prime consultant shall immediately notify the Compliance Programs Section and Consultant Contract Services, and must make good faith efforts to find a replacement for the DBE Department approved revisions to the contract which eliminate work of the DBE do not require replacement. The required good faith efforts are essentially the same as those required prior to award of the contract, such as written notice, personal contact, follow up, negotiations, etc., Good faith efforts must be used to try to meet at least a portion of the goal and should be documented and submitted to the Compliance Programs Section and the Consultant Contract Services Section for evaluation.

Replacement Procedure

The Compliance Programs Section will review the quality, quantity, and intensity of the prime consultant's efforts. Those that are merely for the record, without personal contacts, cannot be approved. If the consultant is able to demonstrate adequate good faith efforts, LADOTD will recommend that the remainder of the goal be waived. The FHWA must concur in any decision made by LADOTD to reduce or waive a contract goal.

XIX. Counting DBE Participation (§26.55)

In order for the prime contractor to receive credit toward the contract goal the DBE must perform a commercially useful function (CUF) as outlined in 49 CFR 26-55. The Project Engineer or inspector on all federal aid projects must complete a CUF review on each DBE working on the project, even if the project has no DBE goal or the DBE was not listed on the CS-6AAA. This CUF review is completed on a form that serves as written confirmation that work committed to DBEs at contract award (or subsequently) is being performed by those DBEs. These CUF forms are placed in the hard copy project files for each project. The Project Engineer or inspector must notify the Compliance Programs Section if it appears that the DBE may not be performing a CUF an investigation and site visit will be conducted by a Compliance Programs Specialist to determine the facts. Periodic, random or scheduled on site visits to monitor CUF performance will also be conducted. The Prime Contractor should take corrective action when the review reveals any negative evaluations. DBE credit may be disallowed and/or other sanctions imposed if it is determined the DBE firm is not performing a CUF. See attached Required Contract Provisions for DBE Participation in Federal Aid Construction Contracts.

DBE participation toward attainment of the goal will be credited on the basis of total subcontract prices agreed to between the contractor and subcontractors for the contract items or portions of items being sublet as reflected on Form CS-6AAA and attachments, in accordance with the LADOTD DBE Program, and the following criteria:

- 1) Credit will only be given for use of DBEs that are certified by the LAUCP at the time of award of contract. Certification of DBEs by other agencies outside the LAUCP is not recognized.

- 2) Credit will not be given towards LADOTD's overall goal for work performed if the DBE has ceased to be certified.**
- 3) The total value subcontracts awarded for construction and services to an eligible DBE is counted toward the DBE goal provided the DBE performs a CUF. The contractor is responsible for ensuring that the goal is met using DBEs that perform a CUF. The CUF is evaluated on a project by project basis.**

The contractor shall operate in a manner consistent with the guidelines set forth in the LADOTD DBE Program. A CUF is performed when a DBE is responsible for the execution of a distinct element of work by actually managing, supervising, and performing the work in accordance with standard industry practices except when such practices are inconsistent with 49 CFR Part 26 as amended, and the LADOTD DBE Program, and when the DBE receives due compensation as agreed upon for the work performed. To determine whether a DBE is performing a commercially useful function, the LADOTD shall evaluate the work subcontracted in accordance with the LADOTD DBE Program, industry practices and other relevant factors. When an arrangement between the contractor and the DBE represents standard industry practice, if such arrangement erodes the ownership, control or independence of the DBE, or fails to meet the commercially useful function requirement, the contractor will not receive credit toward the goal.

- 4) A DBE prime contractor may count only the contract amount toward DBE participation for work he/she actually performs and for which he/she is paid. Any subcontract amounts awarded to certified DBEs by a DBE prime will also be credited toward DBE participation provided the DBE subcontractor performs a CUF. LADOTD requires that all DBE subcontract agreements be made available, upon request.**
- 5) A contractor may count toward the DBE goal 100 percent of verified delivery fees paid to a DBE trucker. The DBE trucker must manage and supervise the trucking operations with its own employees and use trucks owned by the DBE certified trucker. Use of additional trucks will only be given goal credit if also owned by a DBE certified trucker. No credit will be counted for the purchase or sale of material hauled unless the DBE trucker is also a LADOTD certified DBE supplier. No credit will be counted unless the trucker is an approved subcontractor.**
- 6) A contractor may count toward the DBE goal, when a DBE performs as a participant in a joint venture, the total dollar value of the contract equals to the distinct, clearly defined portion of work within the contract that the DBE performs.**

The joint venture agreement must include a detailed breakdown of the following:

- a. Contract responsibility of the DBE for specific items of work.**
- b. Capital participation by the DBE.**
- c. Equipment to be provided to the joint venture by the DBE.**
- d. Specific responsibilities of the DBE in the control of the joint venture.**
- e. Specific manpower and skills to be provided to the joint venture by the DBE.**
- f. Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.**

- 7) A contractor may count toward the DBE goal only expenditures for materials and supplies obtained from DBE suppliers and manufacturers in accordance with the following:**
- a. The DBE supplier assumes actual and contractual responsibility for the provision of materials and supplies.**
 - b. The contractor may count 100 percent of expenditures made to a DBE manufacturer provided the DBE manufacturer operates or maintains a factory or establishment produces on the premises the materials or supplies obtained by the contractor.**
 - c. The contractor may count 60 percent of the expenditures to DBE suppliers, who are regular dealers but not manufacturers, provided the DBE supplier performs a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory, and selling materials regularly to the public. Dealers in bulk items such as steel, cement, aggregates and petroleum products are not required to maintain items in stock, but they must own or operate distribution equipment. The DBE supplier must be certified as such by LADOTD.**
 - d. A DBE may not assign or lease portions of its supply, manufactured product, or service agreement without the written approval of the LADOTD.**
- 8) A contractor may count toward the DBE goal reasonable expenditures to DBE firms including fees and commissions charged for providing a bona fide service; fees charged for hauling materials unless the delivery service is provided by the manufacturer or regular dealer as defined above; and fees and commissions for providing any bonds or insurance specifically required for the performance of the contract.**
- 9) The contractor will not receive credit if the contractor makes direct payment to the material supplier. However, it may be permissible for a material supplier to invoice the contractor and DBE jointly and be paid by the contractor making remittance to the DBE firm and material supplier jointly. Prior approval by LADOTD is required.**
- 10) With prior approval from the Compliance Programs Section, a DBE firm may lease equipment from a Prime Contractor. However, if a DBE firm leases equipment from a Prime Contractor, work performed with that equipment shall not be counted towards the achievement of the contract DBE goal. If a DBE firm has received approval from the Compliance Programs Section to lease a specialized piece of equipment from the prime contractor that they are currently performing work for on a specific project, goal credit will be decided in accordance with the CFR. Lease agreements are required for any equipment leased by a DBE subcontractor before its use on the project and the lease agreement must be related to that specific project. All lease agreements, including signatures, must be submitted to the Compliance Programs Section in advance of use on the project. Upon receipt of any completed**

lease agreements, including signatures, the Compliance Programs Section staff will review and render a decision, after Department process is completed.

- 12) The contractor will not receive credit toward the DBE goal for any subcontracting arrangement contrived to artificially inflate the DBE participation, as determined by the Department.
- 11) DBE Goal Credit will not be given until all DBE subcontractors are paid for work performed.

XX. Certification (§26.61 -§26.91)

All LADOTD Certifications will follow the procedures outlined in the LAUCP which incorporates the federal guidelines 49 CFR Part 26 Subpart O — Certification Standards and Subpart E Certification Procedures and can be found at the following website: [http://www.dotd.la.gov/UCP/UCP Plan Process.pdf](http://www.dotd.la.gov/UCP/UCP%20Plan%20Process.pdf)

§26.61 and §26.63

The LAUCP determines members of presumed groups based on the signed, notarized statement that they are a member of one of the following groups:

- Women
- Black Americans
- Hispanic Americans
- Native Americans
- Asian-Pacific Americans
- Subcontinent Asian Americans

When an applicant makes an individual claim of social disadvantage, or the presumption is rebutted, they have the burden of proving, by a preponderance of the evidence, that they are socially and economically disadvantaged. Appendix E of the regulations must be followed.

§26.65

The LAUCP will examine a firm's federal income tax returns to average the gross receipts over the last three (3) years. Any affiliate companies as defined by the SBA, will be included in this average. The business size will be determined based on the relevant type of work a firm performs, but in no case may it exceed \$26.29 million.

§26.67

Each individual claiming social and economic disadvantage is required to submit a signed, notarized statement of personal net worth using the DOT personal net worth form. When necessary, on a case-by-case basis, additional financial information may be requested to determine such things as the spouse's assets, or clarification on whether assets have been transferred to the spouse. These requests will not be unduly burdensome or intrusive.

Any assets transferred to an immediate family member will be attributed to the individual claiming disadvantaged status unless that transfer is to or on behalf of the family member for that individual's education, medical expenses, or some other form of essential support.

If an applicant is a socially and economically disadvantaged individual because of his/her identity as a Native American based on his/her enrolled membership in a federally or state recognized Indian Tribe, the applicant must demonstrate his/her membership by providing:

(1) Official Indian Tribe Roll Card, or

(2) LADOTD Affidavit of Native American Tribe Membership, which requires attestation by both the firm owner and the tribe leader.

§26.69

The LAUCP will consider all the facts in the record as a whole, including when and how any and all assets were used to obtain the firm. Documentation to support this determination will be required of the applicant. Such documents consist of canceled checks, bank loans, promissory notes, acts of sale, donations, renunciations, etc. All information will be analyzed to determine if the ownership interests were acquired through a real and substantial contribution. Business formation documents will be reviewed for each type of legal structure of a business.

- *Original and any amended Partnership or Joint Venture Agreements Corporation or LLC.*
- *Official Articles of Incorporation (signed by the state official)*
- *Both sides of all corporate stock certificates and the firm's stock transfer ledger*
- *Shareholders' Agreement(s)*
- *Minutes of all stockholders and board of director's meetings*
- *Corporate by-laws and any amendments*
- *Corporate bank resolution and bank signature cards*
- *Official Certificate of Formation and Operating Agreement with any amendments (for LLC's)*

§26.71

The LAUCP will consider all the facts in the record, viewed as a whole, to determine whether socially and economically disadvantaged owners control a firm.

Information required to make the determination includes, but is not limited to:

- Relationships with non-DBE firms (independence)
- Corporate charter provisions, by-laws, voting rights
- Officers of the company
- Family member responsibilities
- Experience/expertise of owners and other managers and key employees
- Managerial and technical competence
- Does the owner hold the professional license? If not, can the individual demonstrate that he/she actually controls the firm?

The LAUCP will conduct an on-site review on all firms applying for certification. A LAUCP uniform on-site review questionnaire is completed during every review. The disadvantaged individual must be present at the firm's home office. Documents such as contracts, payrolls, insurance, etc. are reviewed. Pictures are taken of any equipment or relevant observations.

The LAUCP is committed to assigning NAICS codes that most narrowly describes the work the disadvantaged owner is able to control and the work that the firm performs or intends to perform on federally-assisted contracts. The background experience and expertise of the disadvantaged individual, as well as any work history the firm may have, is evaluated to determine the most specific NAICS codes before assigning. When an additional NAICS code is requested by an existing DBE firm, signed contracts are provided to demonstrate the type of work performed and payrolls are obtained to ensure the firm self-performed the work.

§26.73

LADOTD affirms that a CUF is not a certification issue and is not appealable to DOT. Eligibility of a firm will be based on present circumstances and looking at the standards as a whole. The LAUCP will not refuse to certify a firm solely because it is a newly formed firm or has not performed any work provided it meets the requirements of disadvantage, size, ownership and control. DBE firms and firms seeking DBE certification must cooperate fully with any requests by the LAUCP, or DOT requests on information relative to the certification process.

§26.81

DOT recipients and sub recipients in Louisiana that receive over \$250,000 in federal funds have signed the LAUCP Agreement and are considered members. The agencies identified in the LAUCP as certifying agencies are LADOTD, Louis Armstrong New Orleans International Airport (LANOIA), New Orleans Regional Transit Authority (RTA), and the Orleans Levee District (OLD). LADOTD is the Lead Agency and as such provides oversight to the other certifying agencies. The agreement can be found at the following website, <http://www8.dotd.la.gov/UCP/LADOTD UCP Agreement.pdf>

§26.83

The LAUCP Plan and Process identifies Region 1 as LADOTD and Region 2 as LANOIA, RTA, and LADOTD-NO. Region 1 can accept applications statewide and Region 2 can only accept applications from firms located in the New Orleans and surrounding areas. Out of state firms can apply to any certifying agency. The LAUCP utilizes a uniform on-site review questionnaire. LADOTD has a Certification Review Team that reviews applications and determines eligibility. Region 2 agencies, which includes LADOTD-NO, collectively review Region 2 applications and determine eligibility. A certification decision will be made within ninety (90) days of receiving all information from the applicant firm. The LAUCP does not charge a fee for the application process. DBE firms must notify the LAUCP in writing within thirty (30) days of any change affecting the ability to meet size, disadvantaged status, ownership or control. Annual Affidavits are sent to DBE firms forty-five (45) days from their anniversary date. In this notice the firm is advised that only the firm's federal tax returns are required to be submitted with the affidavit. On a case by case basis additional information may be requested if the certifying agency has a justified reason for the request. Under no circumstances does the annual affidavit process include or reference the terms "expiration" or "recertification". The LAUCP will, when feasible, update a firm's record by conducting an on-site visit every three (3) to five (5) years.

§26.85

In accordance with Interstate Certification an out-of-state application will not be treated as a new certification. The LAUCP will accept a complete copy of the application form, all supporting documents, and any other documents, including annual affidavits that was submitted to the home state. The certifying agency will contact the home State within seven (7) days to request a copy of the on-site visit report and any other pertinent information relative to their certification. The LAUCP will make a determination and notify the firm of its decision within sixty (60) days.

§26.86

When a firm is denied certification or the firm's eligibility is removed, that firm must wait twelve (12) months before it is eligible to reapply for certification. This twelve (12) month period commences on the date of the denial letter or the removal of eligibility letter.

Certification Appeals

Any firm or complainant may appeal the decision in a certification matter directly to DOT. Appeals must be received within ninety (90) days of denial and are sent to:

U.S. Department of Transportation
Office of Civil Rights
Disadvantaged Business Enterprise Division (S-33)
S33AppealsManagementRecords@dot.gov

To file a DBE certification appeal, firms should email the U.S. Department of Transportation. The appeal should at a minimum include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information you believe to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any DOT recipient the firm is currently certified with; or who has rejected its application for certification; or removed the firm's eligibility within one (1) year prior to the date of the appeal. This includes applications currently pending certification action.

§26.87

Should the LAUCP find reasonable cause that a firm is no longer eligible, the firm is provided written notice that they are proposed to be ineligible along with the reasons for the proposed determination. This notice will give the firm an opportunity for an informal hearing before the LAUCP Executive Committee at which time the firm may respond to the reasons for the proposal to remove its eligibility. A complete record of the hearing by court report will be maintained. The certifying agency that certified the firm and proposes the removal will not have a vote in the final decision. The decision will be issued to the firm by the LAUCP Executive Committee. During this process, the firm will remain certified. Should a decision of removal be issued, the firm may appeal to DOT. However, they will be removed as a DBE during this appeal process.

§26.88

Immediately after notification of the disadvantaged owner dying or being incarcerated, the firm will be suspended from DBE certification. The firm will be notified of the suspension and given an opportunity to respond. Within thirty (30) days of receipt of the firm's response, the LAUCP will either remove the suspension or determine that decertification procedures be initiated in accordance with §26.87.

§26.91

If DOT determines, through the appeal process, that the LAUCP denied or decertified a firm erroneously, the firm will be certified upon receipt of the DOT decision.

§26.109

LADOTD will comply with the provisions of this section including not releasing any business information to third parties, maintaining confidentiality regarding complaints and ensuring no retaliation for anyone involved in the complaints. All DBE certification files will be stored in locking file cabinets to ensure confidentiality. LADOTD will cooperate fully and promptly with DOT and Operating Administrations in a complaint investigation, compliance review, or any inquiries made of LADOTD.

LADOTD will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, in a manner consistent with Federal, state, and local law. Louisiana Revised Statute 44:1 et seq. addresses the disclosure of public information to third parties. A Public Information Request Form is available to the public on the LADOTD website. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter, as required by the June 28, 1999, Technical Amendment to 49 CFR Part 26.

XXI. Information Collection and Reporting (§26.109)**Reporting to DOT**

LADOTD will report DBE participation to FHWA, FTA, and when appropriate to FAA semi-annually by submitting The Uniform Report of DBE Awards or Commitments and Payments for use by DOT recipients.

Confidentiality

LADOTD will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law, Louisiana Revised Statute 44:11 et seq. addresses the disclosure of public information to third parties. A Public Information Request Form is available to the public on the LADOTD website. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter, as required by the June 28, Technical Amendment to 49 CFR Part 26.

**DISADVANTAGED BUSINESS ENTERPRISE/ SMALL BUSINESS ELEMENT REQUIREMENTS
FOR FTA FUNDED PROJECTS:**

It is the policy of DOT that disadvantaged business enterprises, including small businesses as defined in Title 49, Code of Federal Regulations, Part 26 (49 CFR 26), shall be afforded reasonable opportunity to participate in the performance of projects financed in whole or in part with federal funds, consequently, the DBE requirements of 49 CFR 26 apply to this project.

The Grantee agrees to comply with section 1101 (b) of TEA-21, 23 U.S.C. § 101 note, and U.S. Department of Transportation regulations, "Participation by Disadvantaged Business Enterprises including small businesses in Department of Transportation Financial Assistance Programs," 49 CFR Part 26.

The Grantee agrees that it 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 Grantee of its failure to carry out its approved program, the Department may impose sanction 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 1966 (31 U.S.C. 3801 et seq.).

The Grantee agrees to ensure that disadvantaged business enterprises including small businesses, as defined in 49 CFR be afforded reasonable opportunity to participate in the performance of this project and any subcontracts that may be let. In this regard, the Grantee shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have reasonable opportunity to compete for and perform services relating to this project. Failure by the grantee to carry out these requirements is a material breach of the Agreement which may result in the termination of this Agreement or such other remedy as the LADOTD deems appropriate.

After proper notification by LADOTD, immediate remedial action shall be taken by the Grantee as deemed appropriate by LADOTD or the agreement shall be terminated. The option will rest with the LADOTD.

The above requirements shall be incorporated by reference in all subcontracts entered into by the Grantee.

Verification Process for TVMS:

Below is the updated TVM Certification language used in FTA-funded transit vehicle procurements:

Section 26.49 Transit Vehicle Manufacturers

The LADOTD and the Office of State Purchasing will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the LADOTD and Office of State Purchasing may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

The procedures will be used to implement vehicle procurement for FTA funded contracts:

FTA Vehicle Procurement Procedures and Checklist		
Date	Process	Status
June 1	Review and revise vehicle specifications and FTA Certifications	
June 15	Review current list of TVMs on State contract and current TVMs listed on FTA's website to ensure that each TVM, as a condition Of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of 49 CFR 26.49 in order to be eligible to bid on federally -funded contracts.	
June 20	Submit vehicle specifications to the Louisiana Division of Administration Office of State Purchasing for review and approval and provide a list of approved TVMs. <u>Because FTA's listing of TVMs can change frequently, this list will be reviewed LADOTD and Office of State Purchasing prior to award of each contract to reflect actual status of. TVM DBE goals.</u> http://www.fta.dot.gov/civilrights/12891.html	

A. Required Contract Provisions

A. Contract Assurance

To ensure that all FTA assisted contracts and subcontracts include the correct language, the Public Transportation Section will review the FTA website for applicable clauses annually and monitor the website periodically prior to executing any agreements.

In addition to the above, the timeline below will be used to monitor and track contracts issued by LADOTD and its sub-recipients to ensure that the below clause is included in every FTA-assisted contract and subcontract will be inserted in the LADOTD DBE Program.

Contract Assurance Timeline	
Date	Process
July	Review FTA Website for updates to the contract assurance clause found in §26.91 of the DBE regulations.
August-September	Develop grant applications or Federal Assistance and include a sample contract that contains the proper contract assurance clause found in §26.91 of the DBE regulations. Post grant applications including FTA applicable contract clauses on the website.
November	Conduct a session at the Annual Public Transit Conference and provide potential applicants with training on the grant application and FTA contract assurance clause found in §26.13 of the DBE regulations.
February-March	Review grant applications and select projects.
April- June	Prior to signing each contract with a contractor and each subcontract (the prime contractor signs with a subcontractor) LADOTD will ensure that the contract includes the contract assurance clause found in 13 of the DBE regulations.
Annually	Conduct site visits to review sub-recipients contract files.

The contracts 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 FTA assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the recipient deems appropriate.

B. Prompt Payment

To ensure that all FTA assisted contracts and subcontracts include the Prompt Payment clauses are included in agreements, the Public Transportation Section will review all contracts and subcontracts annually prior to executing any agreements. The Public Transportation Staff will maintain a compliant log to document contractor's performance. The Public Transportation Section will include the following clause in each FTA assisted prime contract and it will apply to payments made to both DBE and non DBE subcontractors:

Subcontractor and Supplier Payments:

The prime contractor agrees to pay each subcontractor under this prime contract within Thirty (30) calendar days after receiving payment from LADOTD for amounts previously invoiced for work performed or materials furnished under the Contract. Failure to pay subcontractors within Thirty (30) days will be considered in the review of the Contractors Performance of the contract and may result in the withholding of payment to the Contractor.

The LADOTD has reviewed the DBE Program Plan and has updated the plan to include the following retainage policy that reflects the Public Transportation functions.

Retainage: The Contractor agrees further to return retainage payments to each subcontractor within fourteen (14) days after the subcontractor's work is satisfactory completed.

Below is a scheduled plan to ensure that the return of retainage of current contracts will be managed as follows:

Retainage Procedures:

1. LADOTD Program Manager monitor's the contract payments and record amount paid and the amount of retainage for each invoice received. The amount of retainage is verified, tracked, monitored and recorded in the payment log for each subcontractor.
2. Following the end of the contract period, the LADOTD Audit Division performs an audit of contract payments to ensure compliance.
3. Within 14 days after the work is satisfactorily completed, the contractor agrees to return retainage payments for each subcontractor.

The LADOTD has elected to not withhold retainage in future contracts. The LADOTD has issued a new Request for Proposal that does not contain the Retainage Clause.

<http://webmail.dotd.louisiana.gov/agrestat.nsf/WebAdvertisements?Openpage>

C. Legal Remedies

The LADOTD will bring to the attention of the DOT 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. The LADOTD also will consider similar action under our own legal authorities, including responsibility determinations in future contracts. This Legal Remedy will be included in the LADOTD DBE Program.

Legal Remedies —FTA funded Contracts and Subcontracts	
July	Review FTA Website for updates to 49 CFR 26.37
August- September	Develop grant applications for Federal Assistance and include a sample contract that contains the requirements for legal remedies. Post grant applications including FTA applicable contract clauses on the website,,
November	Conduct a session at the Annual Public Transit Conference and provide potential applicants with training on the grant application and FTA contract requirements for legal remedies.
February-March	Review grant applications and select projects.
April-June	Prior to signing each contract with a contractor (and each subcontract the prime contractor signs with a subcontractor) LADOTD will ensure that the contract includes the contract requirements for legal remedies.
Annually	Conduct site visits to review sub- 1 recipients contract files to ensure that legal remedies are included al all FTA funded subcontracts.

D. Reporting

The LADOTD revised the State Management Plan to reflect the following timeline for ensuring accurate completion of DBE reports in TEAM. All reports prior to 2011 were resubmitted in TEAM.

DBE Activity - Timeline	
By Dec. 10th, March 10th, June 10th , Sept. 10th	Send request for DBE activities to Transit Agencies.
By January 1st, April 1st, July 1st, October 1st	Review and compile DBE activities for all Transit Agencies.
By January 10th, April 10th, July 10th, Oct. 10th	Submit DBE activities quarterly in TEAM for ARRA Projects.
By June 1st and December 1st	Submit DBE activities semi-annually in TEAM for all FTA Projects.