

**Regional Planning Commission for  
Jefferson, Orleans, Plaquemines, St. Bernard, and St. Tammany Parishes  
Disadvantaged Business Enterprise Program  
In Compliance with 49 CFR PART 26**

**POLICY STATEMENT**

**Section 26.1, 26.23**

**Objectives/Policy Statement**

The Regional Planning Commission for Jefferson, Orleans, Plaquemines, St. Bernard, and St. Tammany Parishes (RPC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. RPC has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, has signed assurances that it will comply with 49 CFR Part 26.

It is the policy of the Regional Planning Commission to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of RPC:

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

Nikolaus Richard has been delegated as the DBE Liaison Officer. In that capacity, he is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Regional Planning Commission in its financial assistance agreements with the Department of Transportation.

The Regional Planning Commission has disseminated this policy statement to the members of the Commission and all the components of the organization. RPC has distributed this statement to DBE and non-DBE business communities that perform work for RPC on DOT-assisted contracts. All consultants who have performed work for RPC in the past five years were mailed a copy of the Policy Statement. In addition, all qualified DBE firms on a list maintained by the Louisiana Department of Transportation and Development (LaDOTD) under its Unified Certification Program that perform Architectural Engineering (C04), Management (C10), Planning (C11), Transportation Planning (C14), Research Surveys (C15), Supportive Services (C17), Marketing (C36), and Public Relations (C47) were mailed a copy of the Policy Statement.

*Walter R. Brooks*

*8/20/14*

Walter R. Brooks, Executive Director

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

The Regional Planning Commission is the recipient of Federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

The Regional Planning Commission is the recipient of Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

The RPC will use terms in this program that have the meaning defined in Section 26.5 of CFR 49 found as Attachment 1 at the end of this document.

### **Section 26.7 Non-discrimination Requirements**

RPC will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the RPC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### Uniform Report of DBE Awards/Commitments and Payments: 26.11(a)

RPC will report DBE commitments/awards and payments to FTA on a semiannual basis. Uniform reports will be submitted every June 1<sup>st</sup> for the period of October 1 – March 31, and December 1<sup>st</sup> for the period of April 1 – September 30.

#### Reporting to DOT: 26.11(b)

RPC will report DBE participation to DOT as follows:

RPC will report DBE participation on a semi-annual basis, using Uniform Report of DBE Awards or Commitments and Payment Form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

RPC will create and maintain a bidders list. The purpose of the list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who may seek to work on RPC DOT-assisted contracts. This list will be used in helping to set RPC's overall

goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

RPC will collect this information in the following ways: The list of qualified DBE firms will be that maintained under the Louisiana Unified Certification Program Agreement as administered by the Louisiana Department of Transportation and Development (LaDOTD). The RPC will not establish a process of certifying firms for the DBE designation. In order to supplement the list to include non-DBE firms with the age of the firm and annual gross receipts, this information will be requested in all solicitations and will be required as a part of the submittal of a proposal for work on DOT assisted jobs. Most solicitations by the Regional Planning Commission are in the form of RFQ's (Requests for Qualification) and do not require a full proposal. The information will be required of all successful submitters who become contractors and sub-contractors to the RPC.

### **Section 26.13 Federal Financial Assistance Agreement**

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

#### Assurance: 26.13(a)

RPC 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 non-discrimination in the award and administration of DOT assisted contracts. RPC'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 RPC of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear verbatim in financial assistance agreements with sub-recipients.

#### Contract Assurance: 26.13(b)

RPC will ensure that the following clause or similar language is included in every DOT-assisted contract and subcontract:

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.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since RPC has received grants of \$250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year, and is authorized by the statute for which this part applies, RPC will continue to carry out this program until all funds from DOT financial assistance have been expended. RPC will provide to DOT updates representing significant changes in the program. RPC will submit an updated goal annually by August 1.

### **Section 26.23 Policy Statement**

The Policy Statement is delineated on the first page of this program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

RPC has designated the following individual as DBE Liaison Officer:

Nikolaus Richard  
Regional Planning Commission  
10 Veterans Memorial Boulevard  
New Orleans, Louisiana 70124  
504-483-8535  
nrichard@norpc.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that RPC complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has additional staff to assist in the administration of the program. The duties and responsibilities of the DBELO and his staff include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes RPC's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and the Commission on DBE matters and achievement.

9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in Louisiana.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the RPC's updated directory on certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the RPC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

There are currently three minority owned and controlled banks in the State of Louisiana:

Liberty Bank & Trust Co. 6600 Plaza Dr., Suite 600, New Orleans, LA 70127  
Dryades Savings Bank, FSB, 233 Carondelet St., Suite 200, New Orleans, LA 70130  
United Bank & Trust Co., 2714 Canal St., New Orleans, LA 70119

The Regional Planning Commission will investigate the availability of financial institutions owned by DBEs on an annual basis and use their services whenever feasible.

### **Section 26.29 Prompt Payment Mechanisms**

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

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

### **Section 26.31 Directory**

RPC shall maintain a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The list of qualified DBE firms will be that maintained under the Louisiana Unified Certification Program Agreement as administered by the Louisiana Department of Transportation and Development (LaDOTD). All firms certified under the Louisiana Unified Certification Program, regardless of certifying agency, will be considered fully eligible to participate as DBEs. RPC will revise the Directory as revisions are made by LaDOTD. RPC will make the Directory available at their offices and will reference the DOTD website where the list may be accessed. The link to the DOTD website is <http://www8.dotd.la.gov/ucp/>. The Agreement between RPC and LaDOTD and the Certification Plan and Process may be found in Attachment 7 at the end of this program document.

### **Section 26.33 Over-concentration**

RPC has not identified that over-concentration exists in the types of work that DBEs perform. Overconcentration will be re-evaluated every 18 months.

### **Section 26.35 Business Development Programs**

RPC has not established a business development program; however, RPC hereby agrees to periodically host DBE training seminars regarding RPC's planned program activities. The most recent of these seminars was held on June 10, 2011.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

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

1. RPC will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. RPC will consider similar action under their own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available in the event of non-compliance with the DBE regulation by a participant on RPC's procurement activities.
3. RPC will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished by review and monitoring by the DBELO who is also responsible for the review of all invoices submitted by contractors. In this capacity, the DBELO will be able to verify the payment of funds to the contractors and will be available to the subcontractors for verification of payments they should have received.
4. In their reports of DBE participation to DOT, RPC will show both commitments and attainments, as required by the DOT reporting form.

### **Monitoring and Enforcement Mechanisms**

The Regional Planning Commission has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Louisiana State Code

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

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

## **Section 26.39 Fostering Small Business Participation**

The Regional Planning Commission has developed and submitted to the FTA for approval a race and gender neutral non-discriminatory Small Business Enterprise (SBE) program in accordance with Section 26.39 and the new final rule of January 11, 2011. The Small Business Enterprise (SBE) program shall be administered by the Regional Planning Commission's DBE Liaison Officer. The DBE Liaison Officer will have direct, independent access to the Executive Director of the agency.

### Small Business Development

The RPC has established a Small Business Development Administrator to ensure that contracting and procurement policies, procedures and practices support equity and parity in the economic opportunity the agency generates through federal and non-federal spending. The director is charged with the task of making business opportunity more available to small, minority and women-owned businesses through race and gender neutral programmatic activity.

The primary functions of the Director of Small Business Development include outreach, advocacy, business assistance and compliance as detailed below.

### Outreach

1. Serve as an outreach facilitator by connecting the agency with industry groups, civic organizations, non-profits, small business assistance organizations and/or professional associations;
2. Forging partnerships with regional or industry groups to assist with the dissemination of information on opportunities at the agency;
3. Ensuring easy and direct access to SBE program information through the website and other electronic and print media;
4. Issuing Request for Information (RFIs) to obtain general information about suppliers and small business service providers to better inform goal setting, set aside thresholds and SBE utilization;
5. Maintaining a registry of certified SBEs;
6. Conducting educational outreach sessions.

### Advocacy

1. Establishing and facilitating a small business advisory council as a committee of community and industry stakeholders;
2. Utilizing the Small Business Advisory Council to inform DBE/SBE Goals that balance supply, demand and community expectations with project needs;
3. Analyzing current Census County Business Pattern and Louisiana Unified Certification Program data to estimate realistic opportunities for SBE participation;
4. Conducting research on local market conditions to inform DBE and SBE goal setting ;

### Business Assistance

1. Working with local banking and financial institutions to develop programs that support small business participation at RPC;

2. Working with local small business development agencies to develop programs that support increased SBE participation at RPC and other partner agencies with whom we do business with.

#### Compliance

1. Ensuring non-discrimination and facilitating the development and maintenance of a contracting environment in which small businesses can compete fairly;
2. Developing tools for RPC to efficiently access and utilize SBEs for SBE competitions and small purchases for both federal and non-federal spending;
3. Setting SBE goals that accurately reflect the local market;
4. Establishing SBE competition thresholds and determining projects for SBE completion based on the capacity of the local market;
5. Monitoring and reporting SBE compliance to inform continuous improvement of the program.

#### Small Business Development Administrator

The Small Business Development Administrator is responsible for coordinating and administering all aspects of RPC's SBE Program. The Director of Small Business Development has the responsibility of promoting and fostering small business participation in contracts led by RPC for both federally and non-federally funded projects.

The Small Business Development Administrator has direct, independent access to the Executive Director concerning small business and economic opportunity matters. The Director of Small Business Development can be contacted at:

Nik Richard  
Regional Planning Commission  
10 Veterans Memorial Boulevard  
New Orleans, Louisiana 70124  
504-483-8535  
Email: [nrichard@norpc.org](mailto:nrichard@norpc.org)

Programmatic components of the SBE Program to be implemented and administered by RPC are detailed below.

#### SBE Directory and Vendor Registry

RPC will acknowledge and honor all small businesses that register with the state of Louisiana's Department of Transportation and Development (LADOTD).

<http://wwwapps.dotd.la.gov/engineering/lettings/>



### Small Purchase Program

RPC's small purchase policy is guided by the Louisiana Public Bid Law LA RS 39:1508 and allows small purchases not exceeding \$25,000 to be solicited by written competitive price quote from a minimum of two sources. For small purchase activity RPC will restrict purchase and procurement to Small Business Enterprises (SBEs) provided there are a minimum of three certified SBE vendors in the vendor registry with the capacity to provide the service.

### Simplified Acquisitions

RPC simplified acquisitions will be utilized for purchases and procurement of products and services of up to \$100,000 in compliance with regulations for Simplified Acquisition as defined in FTA Circular 4220.1F and the Louisiana Public Bid Law R.S. 38:2211, et seq. For simplified acquisitions of \$25,001 to \$100,000 RPC will develop a vendor registry. As with small purchases, SBE competition for simplified acquisitions will require a minimum of three certified SBEs in the vendor registry.

### SBE Competition

RPC has established a SBE Competition policy for engineering, architectural and environmental services. For procurement activity of up to \$100,000 that exceeds the small purchase threshold and requires sealed bids or competitive proposals, RPC may solicit the product or service as a SBE competition to be competitively selected from among the certified SBEs through an Invitation for Bids (IFB), a Request for Proposal (RFP), or a Request for Qualifications (RFQ) process as applicable to the procurement provided that there are three or more certified SBE vendors in the registry with the capability to provide the product or service. Approval for a SBE competition of up to \$100,000 is required by the Director of Small Business Development and the Executive Director.

A project or procurement activity over \$100,000 can only be considered for SBE competition if the SBE Directory and/or Vendor Registry indicates that there are three or more certified SBEs in the local market area that are capable of performing the scope of work; or if information derived from a Request for Information (RFI) indicates that the local market of SBEs has the capacity to perform the scope of work. Additionally, SBE competition projects over \$100,000 must have the approval of the Director of Small Business Development and the Executive Director.

SBE competitions are established on a project by project basis.

### Stand Alone Projects

RPC will make every effort to un-bundle large capital and infrastructure projects and create stand alone projects in areas where SBEs have the capacity to compete in the small business market.

### Collaborative Contracting

RPC will promote and support the development of joint ventures and collaborative contracting SBEs. To assist with the development of joint ventures RPC will host small business conferences in order to promote collaborative contracting. Additionally, to support joint venture development RPC will utilize the services of regional small business development and financial organizations to provide the support needed for effective joint venture development.

### Building Capacity

In order to build capacity among small businesses in the region RPC will provide incentives for prime contractors using SBEs that have never worked on an RPC project. For professional services selected by an RFP or RFQ process RPC will structure the evaluation criteria to provide additional scoring points to prime contractors bidding with a qualified SBE subcontractor that has never worked on an RPC project.

### Timeframe of Implementation

RPC plans to implement its small business program beginning January 1, 2015.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

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

### **Section 26.45 Overall Goals**

The Regional Planning Commission will annually establish overall goals in accordance with the 2-Step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

In accordance with Section 26.45(f) the RPC will submit its overall goal to DOT by August 1 of each year. In establishing the overall goal each year, RPC will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and RPC's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, RPC will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 10 Veterans Memorial Boulevard, New Orleans, Louisiana for 30 days following the date of the notice, and informing the public that RPC and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority- focus media and trade publications, websites. Normally, RPC will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. RPC's overall goal submission to DOT will include a summary of information and comments received during this public participation process and the responses by RPC.

RPC will begin using the overall goal on October 1 of each year, unless RPC has received other instructions from DOT. If a goal is established on a project basis, RPC will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.49 Transit Vehicle Manufacturers Goals**

RPC 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, RPC 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.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program. This section of the program will be updated annually when the goal calculation is updated.

### **Section 26.51(d-g) Contract Goals**

The RPC will use contract goals to meet any portion of the overall goal that is not projected to be met using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

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

RPC will express contract goals as a percentage of the total amount of a DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

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

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

Walter Brooks, Executive Director of RPC is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

#### Information to be submitted (26.53(b))

RPC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility, i.e., only the apparent successful bidder must submit the DBE information. Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within 10 business days of being notified that they are the successful bidders, but before the contract is executed:

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

#### Administrative reconsideration (26.53(d))

Within 7 business days of being informed by RPC that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Nikolaus Richard  
Regional Planning Commission  
10 Veterans Memorial Boulevard  
New Orleans, Louisiana 70124  
504-483-8500  
[nrichard@norpc.org](mailto:nrichard@norpc.org)

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

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

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

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

The following will be used in requests for proposals and/or bids for contracts for which a specific contract goal has been established.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Regional Planning Commission to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 18 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

**Section 26.55 Counting DBE Participation**

RPC will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. RPC will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

RPC will not certify firms as DBE's. Rather it will use those firms certified under the Louisiana Unified Certification Program (LAUCP) Agreement. That Program uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Agreement and the LAUCP Certification Plan and Process are attached to this document and made a part hereof.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

The Regional Planning Commission will participate as a member of the Louisiana Unified Certification Program (LAUCP) administered by the Louisiana Department of Transportation and Development. The LAUCP will meet all of the requirements of this section.

### **Section 26.83 Procedures for Certification Decisions**

#### Re-certifications 26.83(a) & (c)

As the Regional Planning Commission has not previously certified any firms as DBE's, there are no re-certifications necessary under this Section.

#### "No Change" Affidavits and Notices of Change (26.83(j))

The "No Change" Affidavits and Notices of Change required under Section 26.83(j) shall be administered by the LAUCP.

#### Personal Net Worth, (26.67(b))

The Personal Net Worth statements required of DBE firms shall be administered by the LAUCP.

### **Section 26.86 Denials of Initial Requests for Certification**

Denials of Initial Requests for Certification shall be administered by the LAUCP.

### **Section 26.87 Removal of a DBE's Eligibility**

Removal of a DBE's Eligibility shall be administered by the LAUCP.

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal LAUCP's decisions in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Avenue SE  
West Building, 7th Floor  
Washington, DC 20590

The LAUCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for RPC's DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).



## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

RPC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, RPC 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.

#### **Monitoring Payments to DBEs**

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

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

## **ATTACHMENTS**

Attachment 1	Regulations: 49 CFR Part 26
Attachment 2	Organizational Chart
Attachment 3	DBE Directory of Louisiana Unified Certification Program
Attachment 4	Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race- Conscious Participation, Public Participation, and Contract Goal)
Attachment 5	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 6	Monitoring and Enforcement Mechanisms
Attachment 7	Louisiana Unified Certification Program and Signed Agreement Form
Attachment 8	Newspaper affidavit of RPC's ad announcing its DBE goal.

**Attachment 1**  
**Regulations: 49 CFR Part 26**

The link to Regulations: 49 CFR Part 26 is

[http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=cbf12bea9c8f8917fef340e920be4418&n=pt49.1.26&r=PART&ty=HTML#se49.1.26\\_111](http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=cbf12bea9c8f8917fef340e920be4418&n=pt49.1.26&r=PART&ty=HTML#se49.1.26_111)

**Attachment 2**

**Regional Planning Commission  
Organizational Chart**

**Regional Planning Commission Board**

**Walter R. Brooks, Executive Director**

**Nikolaus Richard, DBE Liaison Officer**

**Megan Leonard, DBE Staff Support**

**Attachment 3**

**DBE Directory**

**Louisiana Unified Certified Program (LAUCP)**

The link to the DOTD's DBE Directory is <http://www8.dotd.la.gov/ucp/>.

**Attachment 4**

**Section 26.45: Overall Goal Calculation**

**Name of Recipient:** The Regional Planning Commission for Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany and Tangipahoa Parishes

**Goal Period:** FFY 15-17 – October 1, 2014 through September 30, 2017

**DOT-assisted contract amount:** \$2.1 million                      **DBE Goal:** 21%

**Total dollar amount to be expended on DBE's:** \$441,000

**Describe the Number and Type of Projects for this FY:**

30 projects for an estimated total of \$2.1 million with a goal of \$441,000 DBE participation

**Market Area:** The Louisiana Parishes of Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John, St. Tammany and Tangipahoa

**Determination of Market Area:**

The eight parishes are the member parishes of the Regional Planning Commission Transportation Policy Committee. All of the contracting dollars that will be expended will be spent in this area and at least 60% of the contractors and subcontractors come from this area.

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

Method: Use DBE Directories and Census Bureau Data

<b>NAICS</b>	<b>Description</b>	<b>Total DBE's</b>	<b>Total All Firms</b>	<b>Base Figure</b>
541310	Architectural Services	20	292	7%
541320	Landscape Architectural Services	8	62	13%
541330	Engineering Services	54	910	6%
541611	Management Consulting Serv.	88	509	17%
541620	Environmental Consulting Services	33	187	18%
541720	Research and Development /Demographic	1	11	9%
<b>Total</b>		204	1,971	10%

**Source:** Louisiana Department of Transportation and Development UCP Directory  
Louisiana Establishment Data by NAICS Code for 2009, U.S. Census Bureau: County Business Patterns

Divide the total number of DBE's by the total number of All Firms = base figure for each project. The base figure comes out to be 10%.

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

RPC does not use weighting in the calculation of our overall DBE goal. Opportunities for weighting are analyzed on a project by project basis.

**Step 2. Adjustment:** Adjustment to Step 1 base figure to make it more precise.

Three factors to consider in the adjustment of Step 1 base figure:

- a. First, the recipient researched its market area for any disparity studies that may have been conducted in the last 7 years. None were found. A study published in 1990 was considered to be outdated.
- b. Second, the recipient addressed other factors by researching and contacting the following offices:
  1. The Regional Transit Authority which has historically certified DBE firms for participation in their procurements and planning studies. The RTA's development of FY 2014 Annual DBE Goal was reviewed and evaluated as it relates to the region.
  2. The Louisiana State DOTD Compliance Office which is the clearinghouse for the Unified Certification Program. The office informed RPC that the Agreement is in effect and that they are using it in their solicitations.
  3. Federal, state or local offices responsible for enforcing Civil Rights laws including the State DOTD Compliance office.
- c. Third, the recipient examined the historic overall DBE goals accomplishments at the agency in recent years. The results are summarized below:

Recipients Historic DBE Accomplishments for DOT-Assisted Contracts

Fiscal Year	Total Awarded	DBE Awarded	Per Cent DBE	Goal	Type of Work
2010	\$1,132,336	\$270,123	23.8%	18%	Planning
2011	\$2,029,018	\$587,341	28.9%	18%	Planning
2012	\$2,281,946	\$419,878	18.4%	18%	Planning
2013	\$3,299,000	\$763,020	23.13%	18%	Planning
2014	\$1,589,500	\$473,490	29.89%	18%	Planning
Total	\$8,636,300	\$1,814,142	24.82%	18%	Planning

The median percentage of accomplishments for all similar projects over recent years is 23.13%. When RPC compares this median with the base figure of 10% for FY-15, the adjusted goal comes out to 16.5%. Since this goal is lower than our current goal of 18%, 18% was used to compare to the historic median. When RPC compares the current goal (18%) to the historic median (23.13%) the result is a goal of 20.5%. It is determined that the adjusted overall goal should be rounded up and increased to 21%.

**Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.**

26.51(b) (1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

5. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;

The recipient estimates that in meeting its overall goal 21%, it will obtain 12% from RN participation and 9% through RC measures, based upon knowledge of the firms available for work and on the history of their participation.

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

### **Public Participation**

**Consultation:** Section 26.45(g) (1). The overall goal of 21% was adjusted from the past goal of 18%. The past goal was established some years ago and the RPC has decided that based on historical DBE participation that goal should be increased. The goal published in the public notice of 20% was determined by the above calculation which gives us a goal of 20.5%. After community input it was suggested that the goal be rounded up to 21%. Minority groups and businesses were contacted at the time the goal was established and it is determined that the increased DBE goal is considered a fair goal.

**Published Notice:** Section 26.45 (g) (2). The Policy Statement for the DBE Program will be published in the media normally used by the RPC to facilitate public notice of its activities. In addition, the following notice will also be published in January of each year.

### **PUBLIC NOTICE**

The Regional Planning Commission hereby announces its fiscal year 2015-2017 goal of 20% for Disadvantaged Business Enterprise (DBE) planning projects. The proposed goals and rationale are available for inspection between 9:00 a.m. and 5:00 p.m., Monday through Friday at the offices of The Regional Planning Commission, 10 Veterans Memorial Boulevard, New Orleans, Louisiana 70124 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

Nikolaus Richard  
Regional Planning Commission  
10 Veterans Memorial Blvd.  
New Orleans, Louisiana 70124  
504-483-8535  
nrichard@norpc.org



## **CONTRACT GOALS**

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

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

The recipient will express its contract goals as a percentage of the total amount of the contract.

**Attachment 5**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

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

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_ Title \_\_\_\_\_  
(Signature)

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

-----  
-----  
-----  
-----

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

**Affirmation**

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

By \_\_\_\_\_  
(Signature) (Title)

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

## **Attachment 6**

### **Monitoring and Enforcement Mechanisms**

The Regional Planning Commission has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

3. Breach of contract action, pursuant to the terms of the contract;
4. Breach of contract action, pursuant to Louisiana State Code

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

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

Attachment 7

**LOUISIANA UNIFIED CERTIFICATION  
PROGRAM AGREEMENT**

We, the undersigned U.S. Department of Transportation (DOT) recipients, do hereby agree to participate in a Unified Certification Program, as required by 49 CFR Part 26.81. This Agreement includes all DOT recipients and subrecipients in the State of Louisiana which award contracts that total over \$250,000.00.

The State of Louisiana has developed a Unified Certification Plan containing the definitions, requirements, process, and forms which will be used by the Certifying Agencies identified below. This manual is attached as Exhibit A, and becomes a part of this Agreement.

The Louisiana Department of Transportation and Development (LaDOTD), the New Orleans Metropolitan Certifying Agency (NOMCA), the Alexandria International Airport through the England Economic and Industrial Development District, and the City of Shreveport have been identified as agencies authorized to provide certification services in the State of Louisiana. These agencies will be responsible for certifying firms whose primary place of business is located in the following regions:

Region 1 - The Louisiana Department of Transportation and Development may certify any firm doing business in the State of Louisiana. Further, the DOTD has entered into agreements with certain DOT recipients within the state to handle issues relative to DBE certification. All current and future recipients that receive funds from DOT shall be required to accept and be bound by this UCP. All agreements are attached as Exhibit B. DOTD shall not certify firms whose primary line of work falls under the concessionaire category. Concessionaire firms will be referred to the certifying agency which is located nearest to their primary place of business.

Region 2 - The Louis Armstrong New Orleans International Airport through the New Orleans Aviation Board, Orleans Levee District through its Board of Commissioners and the New Orleans Regional Transit Authority have formed the New Orleans Metropolitan Certifying Agency (NOMCA). NOMCA will operate as a single certifying agency and will certify firms that have their principal place of business in Region 2 as shown on the attached map identified as Exhibit C.

Region 3 - The Alexandria International Airport, through the England Economic and Industrial Development District, will certify firms that have their principal place of business in Region 3 as shown on Exhibit C.

Region 4 - The City of Shreveport will certify firms that have their principal place of business in Region 4 as shown on Exhibit C.

The LAUCP makes the following representations:

1. The LAUCP agrees to follow all certification procedures and standards of 49 CFR Part 26, Subpart E on the same basis as recipients. Further, it will cooperate fully with oversight, review and monitoring activities of DOT and its operating admin-

istrations. All obligations of recipients with respect to certification and non-discrimination will be carried out by the LAUCP.

2. All direct recipients of DOT funds in Louisiana have signed this agreement, and will accept DBE certification decisions rendered by any of the aforementioned agencies.
3. LAUCP requires all certifications to be pre-certifications in that certifications will be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
4. Sufficient resources and expertise will be made available to allow LAUCP to carry out the responsibilities contained herein. Each Certifying Agency will bear its individual and joint costs in a fair and equitable manner. Each Certifying Agency will continue to bear its own costs, such as site visits, travel expenses and administrative costs. The LaDOTD will bear the cost of creating the LAUCP's web site.
  - a. LAUCP has developed an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary. LAUCP will meet on a monthly basis to ensure a seamless integration of the program. A Program Evaluation Review Technique (Pert) chart is attached as Exhibit D.
    - *Create Standardized Form Letters*
    - *Notification to Recipients re process*
    - *Final Design of Software*
    - *Purchase and Installation of Hardware*
    - *Integrate directory databases*
    - *Site visit to Certifying Agencies for systems inspection, training and technical assistance*
    - *Evaluation and Report of Systems (12 month)*
5. A firm that does not have its principal place of business in Louisiana may apply to be certified with any of the Certifying Agencies, as long as the firm has obtained DBE certification from its home state UCP. Any application received from a firm that is not certified in its home state will be sent back to the applicant for certification and site visit by their home state UCP.
6. The participants in Louisiana's Unified Certification Program (LAUCP) have agreed that the LaDOTD will be responsible for maintaining one centralized directory, which shall be Internet based. This directory will be in place and operating within 180 days from the date of US DOT approval of our plan. The directory shall be printed and issued monthly on a date to be set by the Executive Committee. The LAUCP will maintain a unified DBE directory listing all firms certified by LAUCP (including those from other states certified under these regulations), the information required by 49 CFR §26.31. The LAUCP will make the directory available to the public electronically, on the Internet, as well as in print. The electronic version of the directory shall be updated by including additions, deletions, and other changes as soon as they are made.

One database will be established that will tie all four agencies together. The DOTD will bear the cost for the main server for the system. Each Certifying Agency will be responsible for purchasing its own hardware. The LAUCP will be responsible for the development of the software. The cost of the software will be developed and paid for jointly. Each Certifying Agency will update all information on the files that it processes although DOTD will be responsible for hosting the information.

Access/Security levels are as follows:

- Level 1 - Each certifying agency will be able to access its files for updates and posting of real time information, and will be able to access all files for status review.
- Level 2 – Each recipient will be able to access for status review.
- Level 3 – Any user will be able to access the unified directory that will have real time updates of certification status.

Program Features:

- Daily updates for recipients
- Newsletter/Resource information for the general public
- Upcoming Projects
- Contracts Awarded/ News postings
- Links to recipient web pages

Centralized information will be posted and maintained by DOTD. Individual file information such as annual updates, site visit reports, recertifications, and decertifications will be posted and maintained by each Certifying Agency. Each Certifying Agency shall have full access to the certification file of any applicant or certified firm within the program. Decisions will be communicated to applicants and recipients within fourteen calendar days via U. S. mail. Decisions regarding decertifications and denials will be sent via certified mail.

The LAUCP membership is defined as one member from each DOT recipient in the State of Louisiana. The LAUCP shall have an Executive Committee, comprised of one representative from each Certifying Agency and two members at large from two separate, non-certifying agencies, to be elected by a majority of the membership present and voting. The Executive Committee shall meet quarterly or when circumstances warrant a special meeting beginning upon program approval.

The Executive Committee shall ensure uniformity among the Certifying Agencies and shall make recommendations for amendments/revisions to the UCP Agreement or any associated documents or materials related to the Program. Other committees may be appointed as deemed necessary by the Executive Committee.

The Executive Committee shall:

- Create and amend operational standards for each Certifying Agency
- Monitor and evaluate performance levels for each Certifying Agency on at least a semi-annual basis. Any Certifying Agency that does not comply with corrective action recommended by the Executive Committee shall be subject to removal as a Certifying Agency. Removal as a Certifying Agency shall not affect the recipient's standing as a member of the LAUCP.
- Monitor the development and implementation of the certification directory database including software and hardware.
- Develop LAUCP membership fee structure, if any
- Resolve decisions relative to decertifications and denials of recertifications
- Shall be responsible for initial consolidation of DBE registries until fully operational
- Resolve dispute resolutions of certification

All parties signed herein agree to be bound by this Agreement and the attached Plan and Process Manual. All parties agree that this document shall be valid and binding when executed in multiple counterparts. Each counterpart, when considered collectively with the others, shall constitute the entire agreement between the parties. Subrecipients will be committed to follow the decisions of the UCP. Specific language will be included in future sub grant agreements.

Signing as Secretary of the Louisiana Department of Transportation and Development:

BY \_\_\_\_\_  
Sherri LeBas, Secretary



**EXHIBIT A**  
**LAUCP CERTIFICATION PLAN AND PROCESS**

**I. OVERVIEW**

In February 1999, the U. S. Department of Transportation (DOT) issued new Disadvantaged Business Enterprise (DBE) regulations, Title 49 of the Code of Federal Regulations, (CFR) Part 26, to provide uniform requirements from the DOT. A major component in the new regulation is for all recipients who receive DOT funding to develop a Unified Certification Program (UCP) for certifying small socially and economically disadvantaged businesses. To the extent an inconsistency may exist between this Plan and Process and 49 CFR 23 and 26, as amended; 49 CFR 23 and 26, as amended, shall control. The process must be defined and submitted to the Secretary of Transportation by March 4, 2002.

**II. RECIPIENTS**

This program affects the Louisiana DOTD and direct FTA and FAA recipients who will award prime contracts exceeding \$250,000 in FTA or FAA funds in a year. The following list of recipients has been identified, contacted and afforded the opportunity to participate in the planning, development and implementation of Louisiana's Unified Certification Program.

Acadia Airport District #1 (Le Gros)	Monroe Transit System
Allen Parish Police Jury	Monroe Regional Airport
Alexandria International Airport	Morehouse Memorial Airport
Baton Rouge Metropolitan Airport	Natchitoches Regional Airport
Capital Transportation Corporation	N.O. Regional Transit Authority
Chennault International Airport	
City of Abbeville (Chris Crusta)	Orleans Levee District
City of Alexandria	Ruston Regional Airport
City of Eunice	SBURT (Chalmette)
City of Hammond	Shreveport Regional Airport
City of Lake Charles	Shreveport Downtown Airport
City of Winnsboro	Sportran
DeQuincy Airport Authority	Springhill Airport
False River Airport	St. Bernard Parish Government
Farmerville Airport	St. John the Baptist Parish Airport
George R. Carr Memorial Airport (Bogalusa)	St. Landry Parish Airport
Houma-Terrebonne Airport	St. Mary Parish Council
Iberia Parish Airport Authority	Greater St. Tammany Airport
Imperial Calcasieu RPDC	Southland Field Airport
Jefferson Parish Transit	Terrebonne Parish Consolidated Gov.
Jennings Airport	Town of Many (Hart)
John Hooks Jr. Memorial Airport	
Lafayette Airport Commission	Union Parish Airport
Lafayette Consolidated Gov.	Vicksburg/Tallulah District Airport Bd.
Louis Armstrong N.O. Int. Airport	West Carroll Kelly Airport Authority
Louisiana Department of Trans. and Development	
Louisiana Regional Airport	
Minden/Webster Airport	

### **III. IMPACT**

The Federal Regulation, 49 CFR 26 requires the establishment of a single uniform process, or one stop shopping for DBE applications, certifications, and development of a single point DBE directory. The UCP will not establish, recommend, or alter the DBE Plan and Program of any recipient, other than to supplement an approved plan. The development of a DBE goal, administration, monitoring, and reporting remains the sole responsibility of the recipient agency.

### **IV. PURPOSE OF CERTIFICATION**

The purpose of certification is to ensure that only small businesses independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons participate in the LAUCP DBE Program. These businesses must meet all eligibility standards set forth in 49 CFR 26, subpart D, as amended.

The Certifying Agencies are responsible for determining and certifying the eligibility of all businesses seeking to participate as DBEs on federally assisted transportation related contracts.

### **V. DEFINITIONS**

The LAUCP shall adhere to the definitions set forth in the Federal Regulation, 49 CFR 26.5.

- A. Certifying Agency means a recipient with the authority to perform DBE certification. The four Certifying Agencies in the State of Louisiana are the Louisiana Department of Transportation and Development, New Orleans Metropolitan Certifying Agency, the Alexandria International Airport, and the City of Shreveport. Each agency will certify within the regions identified in the UCP agreement.
- B. Concessionaire means a firm that owns and controls a concession or a portion of a concession, as defined by 49 CFR 23.
- C. Grandfathering means that all firms mutually agreed upon by the UCP committee and certified at the time of merger of the individual directories shall remain certified at the time of program implementation or at such date determined by the UCP executive committee. In such instance where a firm has multiple certification anniversary dates the earliest certification date shall be used for purposes of recertification and annual updates.
- D. LaDOTD means the Louisiana Department of Transportation and Development.

- E. Principal Place of Business/Home State means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the Certifying Agency will determine the principal place of business for DBE program purposes.

## VI. LAUCP CERTIFICATION PROCESS

- A. Application - The certification application will be provided upon request by any Certifying Agency to businesses seeking recognition as a DBE. It is the responsibility of the applicant for certification to submit the required information in a notarized statement under penalty of perjury. Information on eligibility and instructions for completing and furnishing information and documentation that establishes whether each applicant meets the DBE eligibility standards (business size, ownership and control) are included in the application designated as Schedule A.

Applications for certification, along with accompanying documentation shall be examined and evaluated by the Certifying Agency. A determination is reached regarding a firm's eligibility based on whether or not the applicant meets the business size, social and economic disadvantage, ownership, and control requirements. The eligibility standards and guidelines used in making the determinations are included in the regulation (49 CFR 26). Decisions on applications for certification will be made within 90 days of receiving a complete application. The Certifying Agency may extend this time period once, for an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.

- B. Desk Audit – At minimum, the following documents will be reviewed prior to a certification decision:
- Personal Net Worth Statement (current within 6 months)
  - Statement of Social Disadvantage
  - Organizational Documents
  - Status of Marital Regime and Division of Property Statement
  - Initial Contributions
  - Stock Certificates (if applicable)
  - Organizational Tax Returns for the past 3 years for the applicant firm and any affiliated and subsidiary firms
  - Owner(s) Individual tax returns for the past three years
  - Company financial statements
  - Resumes for the principal owners and key staff\ members
  - Equipment (owned and accessible)
  - Work History of the applicant company
  - Bonding and financial capability of the firm
- C. On-site and project site reviews - The Certifying Agency must perform a site visit to the office of the applicant and to any job site which the firm is working at the time of the eligibility investigation. Principals of the applicant firm must

be interviewed. Office and job site visits may be omitted from the investigation in any of the following situations:

1. If a firm has obtained certification by a DOT recipient in its home state prior to applying with a Certifying Agency in Louisiana. On-site reviews may be conducted on firms whose principal place of business is not within Louisiana.
  2. If the Certifying Agency, in its discretion, accepts the certification of another DOT recipient, who included site visits conforming to the regulations.
    - a. The Certifying Agency will contact the appropriate UCP personnel in the state of the applicant's principal place of business for the on-site review report and related documents.
    - b. The Certifying Agency shall not utilize on-site review reports from the applicant's home state which are more than three years old.
- D. Verification of Eligibility - It is the Certifying Agency's responsibility to verify that the applicant meets all the eligibility standards of 49 CFR 26. Each file shall be reviewed to determine if the business is approved, denied or deferred.

If certification is approved, the business shall be added to the LAUCP's directory of certified businesses.

If certification is denied, the applicant will be notified of the decision in writing, detailing the specific reasons for denial.

If certification is deferred, additional information will be requested prior to making a determination or, if the applicant has not responded to a request for information, the file will be closed. After six months, a new application will be required.

- E. The LAUCP will adhere to the Federal Regulation, 49 CFR Part 26.84 when processing applications from SBA certified firms.

## **VII. CERTIFICATION STANDARDS**

- A. The major requirements for certification may be found in 49 CFR 26, Subpart D.

## **VIII. DEALERS, MATERIAL SUPPLIERS AND MANUFACTURERS**

- A. Commercially useful function, normally a counting concept will be considered by the certifying agency in administering contracts to evaluate the firm's method of supplying materials. In accordance with the requirements of commercially useful function as defined in 49 CFR 26.55, standard industry practices will be taken into account when considering a firm's method of supplying products. However, when standard industry practices violate DBE program requirements, DBE program requirements will prevail. It is the re-

sponsibility of the recipient to determine whether a DBE is performing a commercially useful function.

- B. In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe for highway, street and bridge construction and maintenance, the firm must also manufacture the pipe. Metal and/or concrete pipe is specialty pipe which is project specific, and is inspected during the manufacturing process. This arrangement provides for no warehousing of metal or concrete pipe, and essentially requires the manufacturer to be the supplier. Merely ordering pipe from the fabricator, and in turn selling it to contractors, is not consistent with normal industry practice.

## **IX. TRUCKERS**

To be DBE certified, trucking firms must own at least one fully operational truck. The owner is not required to drive the truck and may hire drivers. The truck must have a current registration and be properly licensed. The owner of the trucking firm must also meet all other eligibility requirements.

## **X. CONCESSIONAIRES**

### **A. Process and Net Worth**

The certification process for applicants seeking to be recognized as a concessionaire is the same as the process set forth in Section VII of this Plan. However, concessionaire applicants are not required to submit personal net worth statements, but must submit all other documents required by this plan and 49 CFR Parts 23 and 26, as amended.

### **B. Size Standards**

An eligible DBE concessionaire cannot exceed the size standards outlined in Appendix A to subpart F of 49 CFR 23.

### **C. Franchise and License Agreement**

A business operating under a franchise or license agreement may be certified if it meets the standards outlined in this plan and the franchiser is not an affiliate with the franchisee. In determining whether affiliation exists, the restraints relating to standardized quality advertising, accounting format and other provisions imposed on a franchisee by its franchise agreement generally will not be considered, provided that the franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee may not be controlled by the franchiser by virtue of such provisions in the franchise agreement. Control, and therefore affiliation, could arise through other means, such as common management and excessive restrictions upon the sale of the franchise interest.

D. Ineligible Arrangements

Arrangements which are ineligible for DBE certification include limited partnerships in which a non-DBE is the general partner, and other arrangements that do not provide for ownership and control by the socially and economically disadvantaged owner(s).

**XI DISPUTE RESOLUTION OF CERTIFICATION**

- A. The Executive Committee, comprised of a representative of each of the 4 regions and two at large members, shall reconcile disputes among the Certifying Agencies with respect to certification. The resolution of such disputes will be decided by the Executive Committee. The certifying agency that certified a disputed firm shall recuse itself from the process. If a voting certifying agency member cannot attend, it must send a representative with a proxy. In the event of a tie vote, the Chairman of the Committee will make the final decision.

**XII. DENIALS OF CERTIFICATION**

- A. When a Certifying Agency determines a business to be ineligible for certification, the Certifying Agency will notify the firm, in writing. The letter shall provide an explanation or basis for the denial, specifically referencing the applicable regulations and the evidence in the record that supports each reason for the denial.
- B. All certification denials are administratively final and conclusive at the state level. The applicant firm may appeal the decision, in writing, within 90 days of the date of LAUCP's decision to the U.S. Department of Transportation. The appeals shall be addressed to the U.S. Department of Transportation, Office of Civil Rights, Certification Appeals Branch, 400 7<sup>th</sup> St. S. W., Room 5414, Washington, D.C. 20590. The Certifying Agency will promptly implement any DOT certification appeal decisions affecting the eligibility of the applicant, if DOT overturns the certifying agency's decision.
- C. A firm that is denied certification cannot reapply for certification to any Certifying Agency for a period of twelve months after a final decision has been rendered.

**XIII. DECERTIFICATION**

A. Third Party Challenges

1. Any person may challenge the eligibility of a firm that has been certified. A written complaint which includes information and arguments supporting a complainant's allegations of ineligibility must be accepted by a Certifying Agency. The complainant's identity must be kept confidential in accordance with 49 CFR 26.109 (b).
2. A recipient, a Certifying Agency, or DOT may initiate a challenge in the event information is discovered which suggest that a firm, certified pursuant to this Plan, may not be eligible for certification.

3. Regardless of whether a challenge is initiated by a third party, a recipient, a Certifying Agency, or DOT decertification proceedings must be initiated.

**B. Failure to Submit Recertifications and No Change Affidavits**

1. If a firm fails to submit an application for recertification or a no change affidavit prior to the firm's expiration, the certifying agency will initiate decertification proceedings. The firm will be notified in writing of their failure to cooperate, and will be allowed 14 days to respond to the intent to decertify.
2. The process followed will be the same as addressed in section D. Informal Hearings, F. Appeal Rights, and G. Re-Application mentioned below.

**C. Agency Review**

1. The Certifying Agency must review its records, the material provided by a complainant and any other relevant information to determine whether there is reasonable cause to believe that a certified firm is ineligible.
2. After the Certifying Agency completes its review, written notice must be provided to the firm about the proposed action.
3. The written notice must contain the reason for the proposed finding and the notice must make specific reference to the evidence in the record supporting a proposed finding.

**D. Informal Hearings**

Proceedings to decertify a firm shall be commenced in accordance with 49 CFR 26.87.

1. The DBE firm shall be offered an opportunity to present evidence in support of continued eligibility for DBE certification at an informal hearing.
2. The hearing shall be conducted before the Executive Committee of the LAUCP. Representatives of the Certifying Agency which investigated the challenge and/or made the decision to propose decertification shall not participate in making a decision to remove the firm from eligibility. There shall be an administrative firewall between the proponents of decertification and the decision makers.
3. There must be a written record of the proceedings. A court reporter will provide a transcript with the certifying agency who initiated the decertification being responsible for the cost. The Executive Committee will issue a written decision. The decision will be provided to the firm and the certifying agency.

E. Personal Net Worth

If the reason that a Certifying Agency proposes decertification is that the owner's Personal Net Worth is in excess of the limits set forth in the applicable regulations, the Certifying Agency shall notify the owner in writing of the firm's decertification. No further action shall be taken by the Certifying Agency and/or LAUCP. A firm decertified pursuant to this process shall have the right to appeal to the U.S. Department of Transportation.

F. Appeal Rights

1. Any firm may appeal a decertification decision, in writing, to the U.S. Department of Transportation within 90 days of the date of the LAUCP's decision.

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Avenue SE  
West Building, 7th Floor  
Washington, DC 20590

2. A firm that is decertified remains ineligible during its appeal process to U. S. DOT.

The LAUCP shall promptly implement any decisions rendered by U. S. DOT.

G. Re-Application

A firm that is decertified cannot re-apply for certification to any Certifying Agency for a period of twelve (12) months after a final decision has been rendered.

**XIV. RECERTIFICATION**

- A. Certification under this program is valid for three (3) years from the date of approval by the Certifying Agency. The Certifying Agency will notify the certified DBE firm, in writing, within forty-five (45) days prior to the expiration date. In addition, a recertification application will also be issued at this time.
- B. The recertification application will require the firm to update gross receipts for the firm, as well as provide information on the owner's Personal Net Worth Statement (PNW), and any changes to the ownership/control/management of the firm.
- C. On-site reviews will be conducted on certified firms once every three years, generally at the time of recertification. Each Certifying Agency reserves the right to conduct on-site reviews at any time they deem necessary.

**XV. NO CHANGE AFFIDAVITS (ANNUAL UPDATES)**



- A. Once certified, a DBE must update its submission every year by submitting a notarized affidavit of no change, and documents, pursuant to 49 CFR 26.83(j) which affirms its continued ability to meet the eligibility requirements of the program. The Certifying Agency that processed the original application for the firm will be responsible for all notices and processing of all annual updates.
- B. Out of state firms must provide a copy of the most recent home states certification approval.
- C. A firm is required to notify the Certifying Agency of all circumstances which affect the firm's ability to meet the size, disadvantaged status, ownership or control within 14 days of the change.

## **XVI. CONFIDENTIALITY**

The LAUCP will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information consistent with Federal and State laws. Louisiana's Public Records Act, safeguards certain information from release and LAUCP will not release personal financial information submitted in response to the personal net worth as contained in the certification application to a third party, (does not apply to US DOT) without expressed written consent.

**Attachment 8**

**Newspaper affidavit of RPC's ad announcing its DBE goal**



3800 HOWARD AVENUE, NEW ORLEANS, LOUISIANA 70125-1429 TELEPHONE (504) 826-3201

PUBLIC NOTICE

The Regional Planning Commission hereby announces its fiscal year 2015 goal of 20% for Disadvantaged Business Enterprise (DBE) planning projects. The proposed goals and rationale are available for inspection between 9:00 a.m. and 5:00 p.m., Monday through Friday at the offices of The Regional Planning Commission, 10 Veterans Memorial Boulevard, New Orleans, Louisiana 70124 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following:

Nikolaus Richard  
Regional Planning Commission  
10 Veterans Memorial Blvd.  
New Orleans, Louisiana 70124  
504-483-8535  
nrichard@norpc.org

I attest that the copy attached hereto as "Exhibit A" is a true and correct copy of the advertisement published in The Times-Picayune on these dates.

State of Louisiana

PO 15-10

Parish of Orleans

City of New Orleans

Personally appeared before me, a Notary in and for the parish of Orleans, Randy A. Trahan who deposes and says that he is Administrative Operations Manager of NOLA Media Group, a division of The Times-Picayune, L.L.C., a Louisiana limited liability company, and Publishers of The Times-Picayune, Daily and Sunday, of general circulation; doing business in the City of New Orleans and the State of Louisiana, and that the attached

LEGAL NOTICES

Re: Disadvantaged Business Enterprise

Advertisement of Regional Planning Commission

Accts Payable  
10 Vetarans Blvd  
New Orleans, La. 70124

Was published in The Times Picayune

3800 Howard Ave.  
New Orleans, LA 70125

On the following dates July 18,23 2014

25<sup>th</sup> Sworn to and subscribed before me this  
Day of July, 2014

Notary Public

My commission expires at my death.

Charles A. Ferguson, Jr.

Notary identification number 23492