

DEPARTMENT OF TRANSPORTATION DBE PROGRAM – 49 CFR PART 26

CITY OF LAKE CHARLES DBE PROGRAM FY 2018-2020

MAYOR NICHOLAS E. HUNTER



The City of Lake Charles fully complies with Title VI of the Civil Rights Act of 1964, Americans with Disabilities Act, and related statutes, executive orders, and regulations in all programs and activities. The City operates without regard to race, color, national origin, income, gender, age, and disability. Any person who believes him/herself or any specific class of persons, to be subjected to discrimination prohibited by Title VI/Americans with Disabilities Act may by him/herself or by representative file a written complaint with the City of Lake Charles. The City's Title VI Coordinator/ADA Coordinator may be reached by phone at (337) 491-1440, the Mayor's Action Line at (337) 491-1346, or contact the appropriate Department Head

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement


The *City of Lake Charles* has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The *City of Lake Charles* has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the *City of Lake Charles* has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the *City of Lake Charles* to ensure that DBE's are defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Kimberly Dellafosse, Assistant City Administrator, has been delegated as the DBE Liaison Officer and is assisted by DBE Coordinator, Earl Edwards. In that capacity, the Assistant City Administrator, with the assistance of the DBE Coordinator, are 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 *City of Lake Charles* in its financial assistance agreements with the Department of Transportation.

City of Lake Charles has disseminated this policy statement to the Lake Charles City Council, City Departments, and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that performs work for the City on DOT-assisted contracts. This distribution includes the Lake Charles American Press and the City's website: www.cityoflakecharles.com


Original signed by Mayor Nicholas E. Hunter
[Signature of Mayor]

July 26, 2018
Date

APPROVED BY LEGAL DEPARTMENT CITY OF LAKE CHARLES
Approval subject to signature, date and initials below regarding ordinance approval.
By: <u>Corey L. Rubin</u>
Corey L. Rubin, Assistant City Attorney
Date: <u>July 12, 2018</u>
<input checked="" type="checkbox"/> Authorization ordinance attached.
<input type="checkbox"/> No ordinance approval required.

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 *City of Lake Charles* 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, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The *City of Lake Charles* will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The *City of Lake Charles* 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, national origin, religion, sex, familial status, and/or handicapped.

In administering its DBE program, the *City of Lake Charles* 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, national origin, religion, sex, familial status, and/or handicapped.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

City of Lake Charles' Transportation Department will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The *City of Lake Charles* has created a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculate overall goals. The bidder list will include the name, address, DBE or non-DBE status, age of the firm, and annual gross receipts of firms.

We will collect this information in the following ways:

1. A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;
2. A notice in all solicitations and other widely disseminated information, requesting firms quoting on subcontracts to report information directly to the *City of Lake Charles*.
3. Using the Louisiana Department of Transportation and Development Unified Certification Program (LADOTD UCP) directory database.
4. Other options as they may present themselves.

Section 26.13 Federal Financial Assistance Agreement

City of Lake Charles has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

City of Lake Charles shall not discriminate on the basis of race, color, national origin, religion, sex, familial status, and/or handicapped 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 *City of Lake Charles* 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 *City of Lake Charles*' 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 *City of Lake Charles* 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 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13(b)

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, religion, sex, familial status, and/or handicapped 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 *City of Lake Charles* deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the *City of Lake Charles* has received a grant of \$250,000 or more in FTA planning capital and/or operating assistance within a federal fiscal year, the *City of Lake Charles* will continue to carry out this program until all funds from DOT financial assistance have been expended. The *City of Lake Charles* will provide to DOT updates reflecting significant changes in the program.

We will also provide updates using the *City of Lake Charles* website, designated locations in City Hall, and publication in local newspaper. We will update these notices semi-annually to ensure that they are reaching our audiences. We will also conduct an annual meeting with all DBE participants as well as tentative participants to ensure that they understand the "Policy Statement," and are fully aware on the application and the certification process of becoming a DBE participant.

Section 26.23 Policy Statement

The Policy Statement is elaborated on page four of this program.

Section 26.25 DBE Liaison Officer (DBELO) and Coordinator

We have designated the following individuals as our DBE Liaison Officer and DBE Coordinator:

Kimberly Dellafosse, DBE Liaison Officer
326 Pujoe St.
City Hall, 10th Floor
Lake Charles, LA 70601
337-491-1388
kimberly.dellafosse@cityoflc.us

Earl Edwards, DBE Coordinator
326 Pujoe St.
City Hall, 5th Floor
Lake Charles, LA 70601
337-491-1392
earl.edwards@cityoflc.us

In that capacity, the DBELO and DBE Coordinator are responsible for implementing all aspects of the DBE program and ensuring that the *City of Lake Charles* complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the *Mayor of the City of Lake Charles* concerning any DBE program matters. An organization chart displaying the DBELO and DBE Coordinator's position in the organization is found in *Attachment 1* of this program.

The DBELO, with the assistance of the DBE Coordinator, are responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities 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 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 attainment and identifies ways to improve progress)
6. Analyzes *City of Lake Charles*' progress toward attainment and identifies ways to improve progress
7. Participates in pre-bid meetings.
8. Advises the Mayor on DBE matters and achievement
9. Chairs the DBE Advisory Committee
10. Participates in pre-bid meetings
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Unified Certification Process in Louisiana
14. Provides outreach to DBEs and community organizations to advise them of opportunities
15. Maintains the *City of Lake Charles* updated directory on certified DBEs

Section 26.27 DBE Financial Institutions

It is the policy of the *City of Lake Charles* 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. We have made the following efforts to identify and use such institutions:

We have contacted the SWLA Chamber of Commerce, Community Development Financial Institutions (CDFI) and have not identified any institutions at this time in our five parish area. We will encourage contractors to utilize DBE financial institutions where available.

To date we have identified the following such institutions:

No such institutions identified. The *City of Lake Charles* will monitor this on at least an annual basis.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer or the DBE Coordinator.

Section 26.29 Prompt Payment Mechanisms

The *City of Lake Charles* 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 from the receipt of each payment the prime contract receives from *City of Lake Charles*. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the *City of Lake Charles*. This clause applies to both DBE and non-DBE subcontracts.

The *City of Lake Charles* holds retainage payment on Prime Contractors and requires a clear lien from the Clerk of Courts Office.

Sanction/consequences for noncompliance with the prompt payment clause include the following actions that the City of Lake Charles may originate:

The *City of Lake Charles* will consider including appropriate penalty clauses in each contract for failure to comply with these provisions and including, alternative dispute resolution mechanisms in its contracts, legal action to correct violations, including other actions the *City of Lake Charles* may pursue through its legal counsel including responsibility determinations in future contracts and stopping further action or work on the project for noncompliance with Federal, State and local requirements.

Section 26.31 Directory

The *City of Lake Charles* maintains 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 *City of Lake Charles* uses the Unified Certification Program Directory from the Louisiana Department of Transportation to identify all firms eligible to participate as DBEs. LADOTD directory is available on their website and updated regularly. We make the Directory available to contractors and the public upon request, and it is available:

- *City of Lake Charles* website www.cityoflakecharles.com
- *Lake Charles City Hall, 10th floor Mayor's Office, 326 Pujoe St., Lake Charles, (337) 491-1201*
- *Lake Charles City Hall, 5th floor, 326 Pujoe St., Lake Charles, LA 70601 (337) 491-491-1392*

LA-DOTD DBE Directory Search

<http://www8.dotd.la.gov/UCP/UCPSearch.aspx>

The Directory of City DBEs may be found in *Attachment 2* in the program document.

Section 26.33 Overconcentration

City of Lake Charles has not identified that overconcentration exists in the types of work that DBEs perform. The *City of Lake Charles* will conduct overconcentration reviews periodically.

Section 26.35 Business Development Programs

City of Lake Charles does not have a business development program at this time. *City of Lake Charles* does provide information to DBEs on available trainings, services, and programs. This information is available from McNeese State University's Small Business Development Center, SWLA Alliance, and SWLA Entrepreneurial & Economic Development Center (which the City partners with).

Section 26.37 Monitoring and Enforcement Mechanisms

The *City of Lake Charles* will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment, or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. *Attachment 3* lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBE's at contract award is actually performed by the DBEs. The *City of Lake Charles* will periodically verify DBE programmed work and financial payments as required to DBEs. The *City of Lake Charles* will monitor the paperwork and onsite performance of DBE contractors to ensure the DBE actually performs the work. The *City of Lake Charles* will certify in writing that it has conducted this monitoring.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. This tally will be kept in such a form to allow the *City of Lake Charles* to compare these attainments to commitments.

Section 26.39

The provisions of the *City of Lake Charles*' Small Business Program are found in *Attachment 9*.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The *City of Lake Charles* does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goals and the goals calculations can be found in *Attachment 4* to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the *City of Lake Charles* will submit its overall goal to DOT on August 1 every third year. Before establishing the overall goal each year, *City of Lake Charles* will consult with the *Louisiana DOTD Unified Certification Program*, *SWLA Chamber of Commerce*, *McNeese State University's Small Business Development Center*, *Lake Charles North Redevelopment Authority*, and *Louisiana Economic Development's Entrepreneurial Department* to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the *City of Lake Charles* efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we 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 Lake Charles City Hall, 326 Pujoe St., 5th Floor, Lake Charles, LA 70601, Transit Building, MLK Center, and Central Library for 30 days following the date of the notice. The public is encouraged to provide comments

so that the City and DOT will review comments on the goals after the 30 days have ended. The Notice will be published in the Lake Charles American Press, on the *City of Lake Charles*' website, and/or other media such as Lagniappe Magazine. Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47 Failure to Meet Overall Goals

If the *City of Lake Charles* fails to meet its overall goal in any given year, it will determine the reasons for the failure and will establish corrective steps. This analysis will be kept on file by the *City of Lake Charles*.

Section 26.49 Transit Vehicle Manufacturers Goals

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

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

We will express our contract goals as a percentage of the *Federal share of a DOT-assisted contract*. As stated in Section 26.45, *City of Lake Charles Transportation* will work diligently to reach and educate prospective vendors by using every resource available to allow them to become certified using the LADOTD UCP system and to schedule annual meetings with vendors to make sure that they are aware of changes, as well as, state and global opportunities for them to compete.

Section 26.53 Good Faith Efforts Procedures

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

Where there is a DBE contract goal, the obligation of the bidder/offeror is to make good faith efforts to meet its goal. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting its good faith efforts. Examples of good faith efforts are found in Appendix 6 to Part 26.

The following personnel (see 26.53 (d) below) are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as *responsive*.

We will ensure that all information is complete and accurate and adequately document the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted 26.53 (b)

City of Lake Charles treats the bidder/offeror's compliance with good faith efforts' requirements as a matter of *responsiveness*...

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

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 is provided.

Administrative reconsideration 26.53 (d)

Within 30 days of being informed by *City of Lake Charles* that it is not *responsive* because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

David L. Morgan, City Attorney
326 Pujoe St., 4th Floor City Hall
Lake Charles, LA 70601
dlmorgan@ssvcs.com
337-493-7274

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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts. 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 *City of Lake Charles* will require that a prime contractor shall not terminate a DBE subcontractor without the written consent of the *City of Lake Charles*. The City shall only provide this written consent if the City agrees that the prime contractor has good cause to terminate the DBE contractor.

The *City of Lake Charles* will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer or the DBE Coordinator immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior written 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, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor continues to fail to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the *City of Lake Charles* to practice nondiscrimination based on race, color, national origin, religion, sex, familial status, and/or handicapped 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 0.1385 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 (5) if the contract goal is not met, evidence of good faith efforts.

[Note: When a contract goal is established pursuant to the City of Lake Charles' DBE Program, the sample bid specification can be used to notify bidders/offerors of the requirements to make good faith efforts. The forms found at Attachment 4 can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements.]

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Only the value of the work actually performed by the DBE will count towards the DBE goals.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

City of Lake Charles will use 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. We will make our certification decisions based on the facts as a whole.

The *City of Lake Charles* is a member of the LADOTD Unified Certification Program to perform this function. If a contractor or firm thinks they meet the established criteria, the *City of Lake Charles* will

assist them in getting DBE certified with LADOTD according to the criteria set by LADOTD. Our DBELO and DBE Coordinator will act as liaisons to the Unified Certification Process in Louisiana. When another LADOTD recipient has certified a firm, the *City of Lake Charles* will certify the firm in reliance on the decision of the other recipient.

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

Louisiana Unified Certification Program (LAUCP)
<http://www8.dotd.la.gov/ucp/>
Remy Graves, DBE Certification Program
Remy.graves@la.gov
225-379-1762

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The *City of Lake Charles* is a member of the Unified Certification Program (UCP) administered by Louisiana Department of Transportation. The Louisiana Unified Certification Program will meet all of the requirements of this section. The following is a description of the UCP:

The LADOTD Compliance Programs Section, Certification Unit, certifies businesses capable of performing services and/or products which can be credited toward DBE goals. The certification process ensures that only qualified small business firms that are independently owned and controlled by one or more socially and economically disadvantaged individuals are certified for this program. The first step in the certification process is to complete and submit a DBE application.

In order to comply with regulatory mandates, our department has collectively joined with the Louis Armstrong New Orleans International Airport, the New Orleans Levee District, and the New Orleans Regional Transit Authority to develop and implement uniform procedures for DBE certification. This program eliminates the necessity for DBE firms to complete multiple applications, as certification decisions are reciprocally accepted throughout the UCP membership in Louisiana. Any firm may apply with our department; however, the other three agencies listed above are restricted by geographic location. Our department is recognized as the certifying agent for all airports and transit authorities located within the boundaries of Louisiana who have contracting opportunities in excess of \$250,000.00 annually. This authority excludes those entities mentioned in the previous paragraph.

All Federal Aid Construction Projects include the following statement: "Failure to comply with the Required Contract Provisions for DBE Participation in Federal Aid Construction Contracts shall constitute a breach of contract and, after notification by DOTD may result in rejection of the bid; termination of the contract, deduction from the contract funds due or to become due the contractor; or other such remedy as DOTD deems inappropriate." We are available to provide assistance to the contracting community in complying with all DBE contract issues.

For further information on the UCP, or to download a DBE application, please go to:

<http://www8.dotd.la.gov/ucp/>

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83 (a) & (c)

LADOTD reviews the eligibility of DBEs that they are certified under former part 23, to make sure they will meet the standards of Subpart E of Part 26. They require a DBE affidavit annually to continue the DBE status. The LADOTD schedule for this review process is ongoing for all DBE's that are certified and it requires an affidavit annually, a personal financial statement, and most recent tax form for personal, firms, and all businesses.

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

LADOTD requires all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26 or of any material changes in the information provided with *City of Lake Charles* application for certification.

LADOTD also requires all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which you have provided written notice to the [*City of Lake Charles*] under 26.83 (j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

LADOTD requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

LADOTD will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.86 Denials of Initial Requests for Certification

The *City of Lake Charles*, as a member of Louisiana's Unified Certified Program, will use LADOTD's program.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. *Attachment 8* to this program sets forth these procedures in detail. *City of Lake Charles* will defer to LADOTD on certification matters, in accordance with LAUCP. To ensure separation of functions in a de-certification, we have determined that David L. Morgan, City Attorney will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that David L. Morgan, City Attorney, will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent by letter within 90 days of the date of the final decision to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW

Room 2104
Washington, D.C. 20590

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as proprietary or confidential business information without the written consent of the firm submitting the information, consistent with Federal, state, and local law. In responding to requests for information concerning any aspect of the DBE Program, the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C 552 and 552a) as well as the Louisiana Public Records Law (R.S. 44:1-44) shall apply. *City of Lake Charles* may make available to the public any information concerning the DBE program, release of which is not prohibited by federal or state law. The identity of any complainant shall be kept confidential at their election.

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.

The *City of Lake Charles* will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Monitoring Payments to DBEs

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

We 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 states in the schedule of DBE participation.

Attachment 1
Organizational Chart

City Court

Mayor City Council

Clerk of Council

Administrator

Assistant City Administrator

Personnel

Employee Relations/ Insurance

Risk Management

Finance

Accounting

Purchasing

Utility Billing

Print Shop

Information Technology

Public Works

Building Maintenance

Communications and Traffic

Radio Shop

Sign Shop

Beautification

Solid Waste

Street

Transit

Vehicle Maintenance

Water

Distribution

Production

Water Service/ Lab

Wastewater

Wastewater Lab

Pretreatment

Engineering

GIS

Contract Administration

Planning

Permit Center

Property Standards

Planning and Zoning

Community Development

Summer Feeding

AmeriCorps

Contract Administration

Downtown Development

DDA

Police

Fire

Community Service and Civic Center

Recreation

Mallard Cove

Recreation and Parks
Arts and Culture

City Attorney
DBE Liaison Officer
DBE Coordinator

Attachment 2

DBE Directory

The *City of Lake Charles* maintains 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 *City of Lake Charles* uses the Unified Certification Program Directory from the Louisiana Department of Transportation to identify all firms eligible to participate as DBEs. LADOTD directory is available on their website and updated regularly. We make the Directory available to contractors and the public upon request, and it is available:

- *City of Lake Charles website* www.cityoflakecharles.com
- *Lake Charles City Hall, 10th floor Mayor's Office, 326 Pujoe St., Lake Charles, (337) 491-1201*
- *Lake Charles City Hall, 5th floor, 326 Pujoe St., Lake Charles, LA 70601 (337) 491-491-1392*

LA-DOTD DBE Directory Search

<http://www8.dotd.la.gov/UCP/UCPSearch.aspx>

<u>Name</u>	<u>Position</u>	<u>Race</u>	<u>Gender</u>
Nicholas E. Hunter	Mayor	Caucasian	Male
John Cardone	City Administrator	Caucasian	Male
Kimberly Dellafosse	Asst. City Administrator/DBE Liaison Officer	African American	Female
Earl Edwards	DBE Coordinator	African American	Male
Esther Vincent	Director of Comm. Dev & Services	African American	Female
Corey Rubin	Assistant City Attorney	African American	Male
Alecia Comeaux	Purchasing Manager	Caucasian	Female
Al Hoover	Transit Manager	Caucasian	Male
Dena Jordan	Administrative Assistant	African American	Female
Kacy Lopez	Transit Planner	Caucasian	Female

Attachment 3

Monitoring and Enforcement Mechanisms

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

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

Attachment 4

Section 26.45 Overall Goal Calculation and Methodology

Name of Recipient: *City of Lake Charles* Transit

Goal Period: FY 2018 October 1, 2018 through September 30, 2020

DBE Goal: 13.85%

DOT Assisted Contract Amount: (Annual Allocation) \$5,396,104.00

Total Dollar amount to be expected on DBE's: \$332,000.00

Describe the Number and Type of projects for this Fiscal Year:

The *City of Lake Charles* Transit is planning two projects for the Fiscal Year 2018

- Transit Study
- Bus Storage Facility

Market Area and Number of DBEs

- Allen Parish, Louisiana- 0
- Beauregard Parish, Louisiana- 0
- Calcasieu Parish, Louisiana- 17
- Cameron Parish, Louisiana- 0
- Jeff Davis Parish, Louisiana- 2

Methodology used to Calculate Overall Goal

City of Lake Charles will examine the methodology and base figure from Step 1 below

Step 1: 26.45 (c)

Determine the base figure for the relative availability of DBE's.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs} = 9}{\text{All firms ready, willing, and able} = 65}$$

The data source or demonstrable evidence used to derive the numerator was: *City of Lake Charles* Transit DBE Vendor's list (Ready, willing and able DBE firms) Active and still certified DBE firms listed in the *City of Lake Charles* Transit vendor list.

The data source or demonstrable evidence used to derive the denominator was: (All firms ready, willing and able) the above number of ready, willing and able DBE firms, plus current non-DBE firms listed in the *City of Lake Charles* Transit vendor list. We will also use data from Census Bureau's, Parish/City Business Pattern (PCB) database for Louisiana as well as LADOTD/UCP listing.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was: 13.85%

Step 2: 26.45 (d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal. In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 13.85%.

The data used to determine the adjustment to the base figure was:

- The State UCP List and Vendors currently listed on the *City of Lake Charles* Vendor List of Ready, Willing, and Able Partners

The reason we chose to adjust our figure using this data was because:

- After researching data we concluded that there were an insufficient number of available DBEs.

From this data, we have adjusted our base figure to:

- 13.85%

Public Participation

The City's public participation program ensures early and continuous public notification about, and participation in, major actions and decisions by the *City of Lake Charles*. In seeking public comment and review, the City utilizes a broad range of public information and participation opportunities, including dissemination of proposals and alternatives, process for written comments, public meetings after effective notices, settings for open discussion, communication programs. Information services, and consideration of and response to public comments. The *City of Lake Charles* maintains a website, which is updated frequently to keep the public informed.

The site contains information on the City's responsibilities, programs, publications, and press releases. Contact information for staff; a search function; the Title VI Plan and DBE Program; and complaint procedures. We will also conduct an annual meeting with all DBE participants as well as tentative participants to ensure that they understand the "Policy Statement" and to ensure that they are fully abreast on the application and the certification process of becoming a DBE participant.

Summaries of these comments are as follows:

- Any summaries from these meeting are maintained in the Transit office and are available on request for public review or inspection.
- *City of Lake Charles* Annual DBE Presentation
- DBE *City of Lake Charles* Notification Letter: Included in attachment 4
- *City of Lake Charles* Training Session Invite: Included in attachment 4
- Mail out List of Participants: The Mail out is on file in the *City of Lake Charles* Transit Office and the *City of Lake Charles*
- Office of Community Development.

We published our goal information in the following publications:

- American Press
- The *City of Lake Charles* website: www.cityoflakecharles.com
- The *City of Lake Charles* Social Media Sites

We received comments from these individuals or organizations:

- Comments Pending

Summaries of these comments are as follows:

- Summaries Pending

Our responses to these comments are:

- Responses Pending

Step 1 - Determine the weight of each type of work by NAICS Code:

* Enter all the FTA-assisted projects below. Project amounts should be assigned relevant NAICS Code(s).

	NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
1)	541611	Transit Study 2017 thru 2018 - C14	\$72,000.00	0.3000
2)				0.0000
3)		Bus Storage Area for 2018		0.0000
4)	238910	Site Preparation	\$32,000.00	0.1333
5)	332990	Metal Fabrication - B-93	\$76,000.00	0.3167
6)	324121	Foundation and paving	\$48,000.00	0.2000
7)	238120	Electrical	\$12,000.00	0.0500
8)				0.0000
9)				0.0000
Total FTA-Assisted Contract Funds			\$240,000.00	1

Step 2 - Determine the relative availability of DBE's by NAICS Code:

* Use DBE Directory, census data and/or a bidders list to enter the number of available DBE firms and the number of available firms.

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	541611	Transit Study 2017 thru 2018 - C14	1	3	0.3333
2)					
3)		Bus Storage Area for 2018			
4)	238910	Site Preparation	5	23	0.2174
5)	332999	Metal Fabrication B-93	0	21	0.0000
6)	324121	Foundation and Paving	0	1	0.0000
7)	238210	Electrical	3	17	0.1765
8)					
9)					
Combined Totals			9	65	0.1385
					Overall availability of DBEs

Step 3 - (Weight) x (Availability) =
Weighted Base Figure

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1	541611	Transit Study 2017 thru 2018 - C14	0.30000	x	0.33333	0.1000
2	238910	Site Preparation	0.21740	x	0.22	0.0473
3	332990	Metal Fabrication B-93	0.00000	x	0	0.0000
4		Foundation and Paving	0.00000	x	0	0.0000
5	238120	Electrical	0.17650	x	0	0.0312
6				x		0.0000
					Total	0.1784
					Expressed as a % (*100)	17.84%
					Rounded, Weighted Base Figure:	18%



CITY OF LAKE CHARLES
326 Pujo Street • P.O. Box 900
Lake Charles, LA 70602-0900
(337) 491-1201 • Fax (337) 491-1206

NICHOLAS E. HUNTER
MAYOR

OFFICE OF THE MAYOR

July 26, 2018

Dear

Our records indicate that you have registered with the City of Lake Charles as a Disadvantaged Business Enterprise (DBE). Department of Transportation (DOT) Code of Federal Regulations Section 49 CFR Part 26.81 requires that recipients of DOT funds participate in a Unified Certification Program. Louisiana Department of Transportation and Development (LADOTD) has been identified as a certifying agency. Therefore, the City of Lake Charles has entered an agreement with LADOTD to participate in their Unified Certification Program (UCP) for DBE.

The City of Lake Charles, as well as other entities, is now utilizing the Directory of certified DBE's on the LADOTD website for DBE contract work on City projects, so it is important that you be certified through this program in order to be listed in the Directory. You will need to reapply for certification through LADOTD.

Information on the certification process, including forms and the application can be found on the LADOTD website at: <http://www8.dotd.la.gov/ucp/>. Once you get to the UCP home page, you will find a link towards the bottom of the page called, "UCP Application and Miscellaneous Forms." There you will find instructions for completing and mailing the form and the required supporting documents.

If you need assistance completing the app location, please call my office at 337-491-1201.

Sincerely yours,

NICHOLAS E. HUNTER
Mayor
City of Lake Charles

Unified for Progress and Prosperity



CITY OF LAKE CHARLES
326 Pujoe Street • P.O. Box 900
Lake Charles, LA 70602-0900
(337) 491-1201 • Fax (337) 491-1206

NICHOLAS E. HUNTER
MAYOR

OFFICE OF THE MAYOR

July 26, 2018

Dear

To ensure that all Disadvantage Business Enterprise (DBE) business owners are well informed of City, state and federal policy, the City of Lake Charles will conduct a Contractor's Training Session to provide training in DBE policy and procedures. The training session will be held on November 1, 2018 in The City Council Chambers located on the first floor of Lake Charles City Hall at 326 Pujoe Street.

The session will consist of training in the following areas:

- Disadvantage Business Enterprise (DBE) Program & the City of Lake Charles' Role
- DBE Certification and Registration using the Unified Certification Process (UCP)
- Section 3 HUD Requirements
- DBE, Section 3, and Sec. 2-33 Reporting Requirements
- The Role of DBE Client (Quality first and foremost)
- Where to look for DBE Business Opportunities

It is important that you participate in this session to ensure that your business is properly identified as a Disadvantage Business Enterprise (DBE), and to ensure that you are in the (UCP) system.

Enclosed you will find a copy of the application for certification in the DBE program. Please complete the application and we will assist you in loading your application into the (UCP) system after the session. If you prefer, you may complete the application in the convenience of your office. The application can be accessed at <http://www8.dotd.la.gov/ucp/>

Thanks for your support in this matter.

Sincerely yours,

NICHOLAS E. HUNTER
Mayor
City of Lake Charles

Unified for Progress and Prosperity

Attachment 5

Section 26.51: Breakout of Estimated Race-Neutral & Race-Conscious Participation

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 facilitates DBE, and other small businesses participation
2. Providing assistance in overcoming limitations such as: inability to obtain bonding or financing
3. Providing technical assistance and other services
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities
5. 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
6. Providing services to help DBEs 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
7. Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors
9. Assist DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media
10. A Bull's Eye marketing strategy that matched DBEs to potential contracting and project opportunities
11. Links on the City's website that provides additional information to both DBEs and subcontractors alike
12. Annual DBE Meeting: November 1, 2018.
13. Annual Vendor Meeting: November 1, 2018 with Contractor, Engineers, and Architects.

The *City of Lake Charles* Transit estimates that in meeting its overall goal of 0.1385% it will obtain 100% from Race-Neutral participation and 29.23% through Race-Conscious measures.

The *City of Lake Charles* Transit will adjust the estimated breakdown of Race-Neutral and Race-Conscious DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report Race-Neutral and Race-Conscious participation separately. For reporting purposes, Race-Neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract 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. *(The Race-Neutral and Race-Conscious breakdown will be submitted every three years.)*

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

SECTION 00430

**City of Lake Charles Small Business Opportunity Program (SBOP)
Good faith Compliance Form**

This form is to be submitted by the lowest responsive Bidder within 10 days of bid opening

Project No: _____

Project Title: _____

The total amount of subcontracted work for this project is valued at approximately \$ _____
which is approximately _____ % of the total project.

BIDDER (FIRM):

Contact Person: _____ Telephone: _____

Address: _____ City: _____

State _____ Zip _____ E-Mail: _____

By: _____, _____ / ____ / ____
(Signature) (Title) (Date)

The City of Lake Charles has gone on record to encourage General Contractors to provide opportunities for Disadvantaged Small Business Enterprises (DSBE) to become involved as Subcontractors as specifically stated in City Ordinance Section 2-33. Accordingly, this form is required of the lowest responsive bidder to document his or her specific plan to provide such opportunities.

The City requires all General Contractors to make good faith efforts to award at least 25% of their subcontracted work in all City funded projects to DSBE.

If the lowest responsive Bidder does not plan to provide DSBE opportunities on this project, please explain why.

If the Lowest responsive Bidder does plan to provide DSBE opportunities on this project, please list on the following page.

1. The Lowest responsive Bidder plans to engage the following DSBE firm as a Subcontractor

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **Fax:** _____ **E-Mail:** _____

SCOPE OF WORK: Describe the work to be performed by the DSBE firm.

The estimated dollar value of the scope of work is \$ _____ which is approximately ____% of the amount to be spent on subcontracted work for this project.

DSBE AFFIRMATION

The above-named DSBE affirms that it can perform the scope of work required in a thorough and workmanlike manner to the satisfaction of the lowest responsive Bidder and as per the specifications for the estimated dollar value as stated above.

By: _____, _____, ____/____/____
(Signature) (Title) (Date)

2. The Lowest responsive Bidder plans to engage the following DSBE firm as a Subcontractor

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **Fax:** _____ **E-Mail:** _____

SCOPE OF WORK: Describe the work to be performed by the DSBE firm.

The estimated dollar value of the scope of work is \$ _____ which is approximately ____% of the amount to be spent on subcontracted work for this project.

DSBE AFFIRMATION

The above-named DSBE affirms that it can perform the scope of work required in a thorough and workmanlike manner to the satisfaction of the lowest responsive Bidder and as per the specifications for the estimated dollar value as stated above.

By: _____, _____, ____/____/____
(Signature) (Title) (Date)

If more space is needed, please make more copies of this page.

The City of Lake Charles considers the actions listed below evidence of the good faith efforts to award at least 25% of their subcontracted work to DSBE. **Please mark appropriate boxes.**

YES	NO	EVIDENCE OF GOOD FAITH EFFORTS
		PRE-BID MEETING(S): The bidder attended the pre-bid meeting if held.
		SMALL CONTRACT(S): The bidder selected specific portions of the work to be performed by DSBE firms in order to increase the likelihood of meeting the SBOP goals (including breaking down contracts into smaller units to facilitate DSBE participation).
		SBOP LIST(S): The bidder utilized the City's Small Business and Disadvantaged Small Business Enterprise List or lists of certified DSBE firms found at www.cityoflakecharles.com .
		FOLLOW-UP: The bidder followed-up initial indications of interest by DSBE firms by contacting those DSBE firms to determine with certainty if they remained interested in bidding.
		ADVERTISEMENT: The bidder advertised in general circulation, public journals, and/or trade association publications concerning subcontracting opportunities, and allowed DSBE firms reasonable time to respond.
		GOOD FAITH NEGOTIATIONS: The bidder negotiated in good faith with interested DSBE firms and did not reject DSBE firms as unqualified without sound business reasons based on a thorough investigation of their capabilities.
		INFORMATION: The bidder provided interested DSBE firms with adequate information about the plans, specifications, and requirements of the subcontract.
		WRITTEN NOTICE(S): The bidder took the necessary steps to provide written notice in a manner reasonably calculated to inform DSBE firms of subcontracting opportunities and allowed sufficient time for them to participate effectively.
		COMMUNITY RESOURCES: The bidder used the services of the City's SBOP office, available community organizations, small and/or disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of DSBE firms.
		CONTRACT RECORDS: The bidder has maintained the following records for each DSBE firm that has made bid on the subcontracting opportunity: 1. Name, address, and telephone number; 2. A description of information provided by the bidder or Subcontractor; and 3. A statement of whether an agreement was reached, and if not, why not, including any reasons for concluding that the DSBE was unqualified to perform the job.

Please list the DSBE contacts made and the results of said contact.

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **E-Mail:** _____

Type of work solicited for this project:

Results of Bidder's contact with the DSBE firm:

SBOP Office Use Only:

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **E-Mail:** _____

Type of work solicited for this project:

Results of Bidder's contact with the DSBE firm:

SBOP Office Use Only:

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **E-Mail:** _____

Type of work solicited for this project:

Results of Bidder's contact with the DSBE firm:

SBOP Office Use Only:

Name of DSBE Firm: _____

DSBE Firm Owner or Contact: _____

Telephone: _____ **E-Mail:** _____

Type of work solicited for this project:

Results of Bidder's contact with the DSBE firm:

SBOP Office Use Only:

If more space is needed, please make more copies of this page.

SECTION 00435

SUBCONTRACTOR LIST

(Required from Apparent Low Bidder within 10 Days of Receipt of Bids)

Capital Project No.: _____

In accordance with Ordinance No. 12743 of the City of Lake Charles, Louisiana, the following is a list of Subcontractors proposed to be used on above listed Project or Capital Project No., including the category or scope of work, which each Subcontractor will be performing. **Any disadvantaged small business enterprise (DSBE) should be identified as such next to their name.** *If no Subcontractors are to be used on this project, the bidder shall so indicate by insertion of the phrase "No Subcontractors will be used on this project" written or typed across this submittal.*

The Contractor will be required to use all Subcontractors listed on this form in the identified scope of work. Listing Subcontractors with a duplicate category or scope of work will not be permitted.

The obligation to submit the names of Subcontractors on the Subcontractor's Submittal form is not applicable for subcontracts amounting to less than Five Thousand Dollars (\$5,000.00), or less than one percent (1%) of the total amount bid.

SUB'S NAME, ADDRESS AND TELEPHONE

CATEGORY OR SCOPE OF WORK

1) _____

2) _____

3) _____

4) _____

Signed: _____

Title: _____

Attachment 7

Certification Application Forms

As per Subpart D, Section 26.61 - 26.73 Certification Process, the *City of Lake Charles* is a member of the LADOTD Unified Certification Program which performs this function. If a contractor or firm thinks they meet the established criteria, *City of Lake Charles* will assist them in getting DBE certified with LADOTD according to criteria set by DOT.

Attachment 8

Procedures for Removal of DBE's Eligibility

As per Section 26.89 Removal of a DBE's Eligibility, in the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. The *City of Lake Charles* will defer to LADOTD de-certification, in accordance with LA UCP. To ensure separation of functions in a de-certification, we have determined that David L. Morgan, City Attorney will serve as the decision-maker in de-certification proceedings. We have established an administrative 'firewall' to ensure that David L. Morgan, City Attorney will not have participated in any way in the decertification proceeding against the firm (including the decision to initiate such a proceeding).

Attachment 9

Regulation: 49 CFR Part 26.39 Small Business Program



City of Lake Charles

326 Pujo Street
P.O. Box 1178
Lake Charles, LA
70602-1178

Signature Copy
Ordinance: 18130

File Number: 104-18

Enactment Number: 18130

An ordinance amending Sec. 2-33 of the Code of Ordinances to allow the City's participation goals requiring its general contractors to make good faith efforts to provide subcontracting opportunities for small businesses owned and operated by socially and economically disadvantaged persons to be declared by an Executive Order of the Mayor within the City's Small Business Opportunity Program (SBOP) and to provide enforcement provisions to ensure compliance with the requirements of this ordinance.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAKE CHARLES, LOUISIANA, in regular session convened, that:

SECTION 1: Sec. 2-33 of Chapter 2 of the Code of Ordinances for the City of Lake Charles, Louisiana, is hereby amended and reenacted to read as follows:

"Sec. 2-33. Use of small businesses owned and operated by socially or economically disadvantaged persons subcontractors.

(a) The city has gone on record to encourage general contractors to provide opportunities for small businesses owned and operated by socially or economically disadvantaged persons to become involved as subcontractors. To that end, the city requires all general contractors to make good faith efforts to reasonably provide subcontracting opportunities of their subcontracted work in all city funded projects that are subject to the Louisiana public bid laws to small businesses owned and operated by socially or economically disadvantaged persons as defined in section 2-28(h).

(b) The city shall compile and maintain a directory of those small businesses owned and operated by socially or economically disadvantaged persons that have been certified pursuant to section 2-28(f) and shall provide all bidders with a copy of this directory together with bid packages and/or requests for proposals.

(c) General contractors shall provide written evidence of their efforts to utilize these certified subcontractors within ten days of the bid opening. Accordingly, each general contractor whose bid is accepted by the city shall contact an adequate number of subcontractors who are listed in the city's directory of certified small businesses to demonstrate good faith compliance with this requirement of this section and shall provide the following information regarding the bid for subcontract work: Name, address and phone number of each small business contacted, date of initial contact, how the contact was made, the nature of the subcontract work offered to this subcontractor, and the result of contact. Nothing herein shall be deemed to require that the general contractor accept the bid of any subcontractor.

(d) The city shall retain five per cent of the contract amount to assure compliance with the provisions of this section. In the event that the contractor fails to present written proof of his efforts to contact small businesses owned and operated by socially or economically disadvantaged persons and offer them an opportunity to bid on subcontract work as required herein, the city shall declare him in default of his obligation to do so and the entire retainage amount shall be forfeited to the city.

(e) Furthermore, the failure to carry out the requirements set forth herein after receipt of written notification by the city of the non-compliance and a reasonable period of time to correct the deficiency shall constitute a breach of contract, and in addition to any other corrective action allowed by law, contract, or city policy, may result in the rejection of the bid as non-responsive, termination of the contract, a deduction/withholding of all or any portion of payments due or to become due to the general contractor from the contract funds until the non-compliance is cured, liquidated damages, determination of non-responsibility, suspension for a period up to six (6) months, or debarment of all future bids on any public procurement of the city for a period of one (1) year, or other such remedy as the city deems appropriate after receipt of a written notice of the deficiency from the city and the general contractor was given an opportunity to be heard."

SECTION 2: All other paragraphs, subsections, subparagraphs, clauses, phrases and words of this section, not specifically amended by this ordinance, are to remain the same.

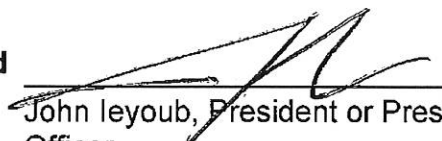
At a meeting of the City Council on 4/4/2018, this Ordinance was adopted by the following vote.

For: 7 John Ieyoub, Johnnie Thibodeaux, Luvertha August, Mark Eckard, Rodney Geyen, Mary Morris, and Stuart Weatherford

Against: 0

Absent: 0

Passed and Adopted


John Ieyoub, President or Presiding
Officer


Date 4-4-18

Attest


Lynn F. Thibodeaux, Clerk of the Council

Date 4-4-18

Approved by


Nicholas E. Hunter, Mayor
City of Lake Charles, Louisiana

Date 4-6-18

CITY OF LAKE CHARLES

PARISH OF CALCASIEU

STATE OF LOUISIANA

EXECUTIVE ORDER NO. 2018-01

PURSUANT to the executive and administrative authority granted thereto the Mayor of the City of Lake Charles as its executive officer by Sections 3-01 and 3-08 of the Charter of the City of Lake Charles, the following executive order is hereby issued:

WHEREAS, the Mayor of the City of Lake Charles is authorized and obligated to make this declaration pursuant to Article 3 of the Charter of the City of Lake Charles and all other applicable state and federal provisions;

WHEREAS, Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000 (d) et seq. ("Title VI") prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds or other federal financial assistance without regard to whether specific projects or services are federally funded;

WHEREAS, the United States Department of Transportation (USDOT) has in effect federal regulation 49 CFR Part 26 requiring all USDOT funded agencies to implement a race and gender neutral small business program for locally funded procurements and projects;

WHEREAS, pursuant to the authorizing provisions of the City of Lake Charles' Title VI Program, 49 CFR 26.39 (B) (3), La. R.S. 38:2233, La. R.S. 38:2233.2, La. AG Op. 12-0059, and Sec. 2-28 of the City of Lake Charles' Code of Ordinances, the Mayor or designee is authorized to set aside an identified percentage of the total value of anticipated City funded procurement contracts for goods and services excluding construction each fiscal year for small businesses and small businesses owned and operated by socially and economically disadvantaged persons.

WHEREAS, pursuant to the authorizing provisions of the City of Lake Charles' Title VI, Program, 49 CFR 26.39 (B) (3), and Sec. 2-33 of the City of Lake Charles' Code of Ordinances, the City requires all general contractors, who are awarded City funded projects which are subject to the Louisiana public bid laws, to make good faith efforts to provide economic and subcontracting opportunities for small businesses owned and operated by socially and economically disadvantaged persons to participate as subcontractors on these projects.

WHEREAS, it is in the best interest of the City to maximize the use of socially and economically disadvantaged business enterprises and local small businesses in accordance with applicable law in order to foster small business participation in public contracting opportunities;

WHEREAS, it is in the best interest of the City to create a process that is open, honest, fair, transparent, just, and inclusive thereby taking all reasonable steps to eliminate obstacles to the participation of small business and to facilitate competition between small business concerns;

NOW THEREFORE, IT IS ORDERED THAT:

Section 1. -Introduction.

In accordance with all applicable state and federal laws, the City of Lake Charles has implemented the following Small Business Opportunity Program ("SBOP") for small businesses as defined under Sec. 2-28 and small businesses owned and operated by socially and economically disadvantaged persons as

defined under this executive order to comply with the City's policy of providing and ensuring contracting/purchasing opportunities to level the playing field for these business concerns. The ultimate

goal is to better enhance economic development within our own community through the growth and development of these small businesses.

The City is taking steps to enhance its already existing federal disadvantaged business enterprise ("DBE") programs for federally funded projects. The SBOP will operate along with the federal DBE program, and will be complimented with other business development programs provided by community partners and other entities which will promote the development and growth of all small businesses.

The guidance provided in this document is not all inclusive and shall be adjusted on an as needed basis and as directed and governed by local, state, and federal laws, rules, and regulations. The City reserves the right to improve upon the procedures and documents in this program in order to more efficiently achieve the objectives of the program. It is the City's objective to improve and expand these very important programs.

The City will also, in conjunction with the federal DBE program, provide components available to all small businesses throughout the City. This program will not employ any set-aside or quota provisions, but will set goals to meet this objective that will be monitored and reported to evaluate the program's effectiveness.

Section 2. - Policy statement.

It is the policy of the City of Lake Charles to ensure opportunities are made available to small businesses and small businesses owned and operated by socially and economically disadvantaged persons (sometimes also referred to as disadvantaged small business enterprises ("DSBE's")) in the City's letting of contracts and purchases. At no time shall any City department or representative exclude any responsive bidder from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract or purchase on the basis of race, color, gender, age, income, disability, religion, or national origin.

The intent of this policy is to identify and eliminate barriers which may have an adverse impact upon small businesses and DSBE participation in all City-let contracts and purchases. Its general contractors will be required to participate in this endeavor and at no time shall they discriminate on the basis of race, color, gender, age, income, disability, religion, or national origin in the award and performance of any City-let contract or purchase.

Section 3. - Definitions.

Certification. Procedure for verification that a business qualifies for designation as a small business owned and operated by socially and economically disadvantaged persons (for the Small Business Opportunity Program) or disadvantaged business enterprise (for the federal DBE program).

Commercially useful function. The performance of real and actual service in the discharge of any contractual endeavor. The contractor must perform a distinct element of work which the business has the skill and expertise as well as responsibility of actually performing, managing and supervising.

Page 3: (City of Lake Charles Executive Order No. 2018-01) Mayor Nicholas E. Hunter

Compliance. When a recipient, sub-recipient, contractor and/or subcontractor have correctly implemented the requirements as set forth in governing directives.

DOT U.S. Department of Transportation, including the office of the secretary, the federal highway administration (FHWA), the federal transit administration (PTA), and the federal aviation administration (FAA).

Disadvantaged business enterprise or DBE. A for-profit small business concern: that is at least 51 percent owned by one or more individuals who are 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 whose management and daily business operations are controlled by one or more of the economically disadvantaged individuals who own it. For the City's federal DBE program, this category is defined utilizing the federal small business standards.

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

Economically disadvantaged (for federal DBE Program). Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is found to be an economically disadvantaged individual by the small business administration (SBA) pursuant to section 8(a) of the small business act, for the federal DBE program.

Economically disadvantaged (for Small Business Opportunity Program). Means anyone who is socially disadvantaged whose ability to compete in the free enterprise system has been impaired due to industry practice and/or diminished capital capacity and/or restricted credit opportunities as compared to others in the same or similar line of business that are not socially disadvantaged.

Goal. A numerically expressed objective which the City of Lake Charles or contractors and service providers are required to make good faith efforts to achieve in those specified contracts funded with federal and City money as stated by governing federal regulations, the Mayor, and/or City Council.

Good faith efforts. Efforts to achieve DSBE or DBE goals or other requirements of this program which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint venture. An association of an DSBE or 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 DSBE or DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the joint venture is commensurate with its ownership interest.

Noncompliance. When a recipient, sub-recipient, contractor and/or subcontractor have not correctly implemented the requirements set forth in governing directives.

Personal net worth. The net value of the assets of an individual, remaining after the total liabilities are deducted. An individual's net worth does not include: The individual's ownership interest in an applicant or participating DSBE or DBE firm, or the individual's equity in his or her primary place of residence. An individual's personal net worth includes his or her own share of assets held jointly or as community property with the individual's spouse, and other assets.

Small business for federal DBE program. 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 49 CFR part 26, section 26.65(b).

Small business for City's Small Business Opportunity Program. The City of Lake Charles shall use the definitions of a "small business" as provided under Sec. 2-28 (h) of the Code of Ordinances.

Small business owned and operated by socially and economically disadvantaged persons or DSBE. Means a for-profit small business that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged persons or, in the case of a small business entity, at least 51 percent of the stock or shares must be unconditionally owned by one or more such individuals who are both socially and economically disadvantaged and the business' management, policy determinations, and daily business operations are controlled by such individuals.

Socially disadvantaged. Means anyone who is a member of any group that has historically been subjected to racial or ethnic prejudice or cultural bias within the larger American culture because of his or her identity as a member of the group without regard to the person's individual qualities.

Section 4. - Disadvantaged business enterprise liaison and staff.

A City staff member shall be appointed as the City's Disadvantaged Business Enterprise Liaison who will be responsible for management and oversight of this program. The DBE Liaison will be provided sufficient staff support to assist in the administration of this program. The DBE Liaison will have direct, independent access to the Mayor concerning program matters.

The primary responsibilities of the DBE Liaison and support staff will be:

1. To coordinate the implementation of the program with key departmental staff responsible for contracts, leases and purchases, making certain that positive actions are taken to promote small business, DSBE, and DBE participation;
2. Perform as the authority for DSBE and DBE certification, to include the investigation, certification, and eligibility of qualifying small business concerns who are eligible to provide services;
3. Monitor reports on all City-let contracts, leases, and purchases;
4. Maintain records and reports of procedures used to identify and award said opportunities to these business concerns;
5. Review all bids and contracts for program compliance and make recommendations as to the compliance of the bid with these requirements;
6. Review all substitutions of subcontractors to ensure that the substitutes are eligible program participants;
7. Serve as liaison to local trade organizations/associations and media to provide information on business opportunities; and
8. Administer all small business support services that are a part of this program.

Section 5. - DBE Liaison and support staff function.

The program's objectives are to ensure participation of small businesses, DSBE's, and DBE's in contracts/purchases by taking all necessary steps to ensure that these businesses have an equal opportunity to compete for and perform services. The DBE Liaison and staff, will therefore:

1. Develop and use appropriate techniques to provide equal access to small businesses, DSBE's, and DBE's in contracts and purchases.
2. Provide, for the benefit of proposers and prime contract bidders, a directory of DSBE's and DBE's available for possible contract/purchase opportunities.
3. Provide assistance that will lead to the certification of qualifying DSBE's.
4. Coordinate with the public works department, the purchasing division, and other designated departmental points of contacts as to the actual utilization of DSBE's and DBE's, and review all substitutions before bid opening and during contract performance.
5. Maintain and/or monitor required tracking and reporting procedures as they relate to the program.
6. Act as an arbitrator in disputes involving DSBE's and DBE's.
7. Perform as a point of contact for interpretation of supporting rules and regulations governing the program.

Section 6. - Program application overview.

The Small Business Opportunity Program (SBOP) will work in conjunction with the federal DBE program. Some of the major components of this program are as follows:

- 1) The SBOP has a participation goal for all City-funded contracts and procurements that are bid or awarded. This program will also involve practices with the City's discretionary funds spending, to achieve its goals. The federal DBE program has a department of transportation (DOT) calculated availability based goal and employs race conscience and race neutral methods to reach its goal. These percentages will be combined to meet the City's overall participation goal.
- 2) These programs will be supervised by the City's DBE Liaison with sufficient staff and resources to perform these programs successfully. The support staff will perform the duties necessary for managing the federal funding requirements and perform the duties to increase and monitor the inclusion of these businesses in City-funded spending. As required by federal regulations, the DBE Liaison will have direct, independent access to the Mayor.
- 3) These programs will be involved in long-range planning with each City department to ensure opportunities for DSBE and DBE inclusion by various measures, such as, reasonable project size breakdowns.
- 4) All contracts, including emergency orders by the City, will involve these programs. This program will verify information on DSBE's and DBE's given opportunities to participate as prime contractors and subcontractors. Project change-orders must also adhere to these programs.
- 5) DBE Liaison will be empowered to place contract awards on hold for the City Administrator's and/or the Mayor's review when the award violates the role, scope, or mission of these programs.
- 6) Small businesses interested in participating in these programs should register or be certified with the City.
- 7) DBE support staff will be aggressive in educating small businesses in bid opportunities and the bidding processes. A copy of each City project's plans and specifications will be provided to the program staff for their review with interested DSBE's and DBE's.
- 8) DBE support staff will be responsible for coordinating unsuccessful bidders' reviews, upon request.

Section 7. - Participation goals.

As stated in the introduction, it is the intent of the City of Lake Charles to ensure equal contracting and purchasing opportunities are made available to small businesses and small businesses owned and operated by socially and economically disadvantaged persons. An overall goal will be set for participation in those contracts that are funded, in part or in whole, with funds received by the U.S. Department of Transportation (DOT) in accordance with 49 CFR Parts 23 and 26 and by the U.S. Environmental Protection Agency in accordance with their office of small disadvantaged business utilization guidance document. Other federal participation efforts established will be in accordance with the appropriate directives, laws, rules, and regulations of the other federal funding sources that are present in the City of Lake Charles. The City's participation goal for all City funded projects under the City's SBOP that are bid and contracts entered into is to increase DSBE's participation on subcontracting opportunities by a twenty-five percent (25%) increase every three (3) years. This program will also involve practices with the City's discretionary funds spending, to achieve its goals.

Section 8. - Good faith efforts.

In order to be a responsible and/or responsive bidder, a general contractor and/or subcontractor must make good faith efforts to meet the participation goal. The bidder can meet this requirement in one of two ways. First, the bidder can meet the goal, documenting commitments for participation by DSBE or DBE firms (whichever is applicable to the contract) sufficient for this purpose. Second, if a bidder doesn't meet the goal, the bidder can document good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a goal or other requirement of this plan which, by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient DSBE or DBE participation, even if they were not fully successful. This information must be fully documented and submitted by the lowest bidder within ten days of the bid opening for bid jobs and submitted with contracts, in order for the requirement to meet the entire stated goal to be waived. This information will be

reviewed by the purchasing office/engineer or architect office, which receives the bids, the contracting department for non-bidder contracts, and the DBE staff, when the entire goal is not met.

To assist in informing bidders of their requirements, a "bidder checklist of good faith effort requirements" may be submitted. Standard actions to be taken in the event of noncompliance may also be included. This checklist should be included in all contracts funded with federal dollars and/or City funds. The following is a list of additional types of action that should be considered as part of the bidder's good faith efforts:

- Solicitation: This can be done through attendance at pre-bid conferences, advertising and/or written notices. Solicitation must be done to allow sufficient time to allow DSBE's or DBE's to respond. Follow-up actions must be taken to ensure DSBE or DBE interests.
- Selecting portions of the work in order to increase the likelihood that the DSBE or DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DSBE or DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist DSBE's or DBE's in responding to a solicitation.
- Negotiating in good faith with interested DSBE's or DBE's. Documented evidence must be supplied as to why additional agreements could not be reached for DSBE's or DBE's to perform the work.
- Not rejecting DSBE's or DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- Making efforts to assist interested DSBE's or DBE's in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor. Obtaining written documentation from a bona fide security company indicating why bonding was denied and for what reason(s) prior to the DSBE or DBE being rejected as a potential subcontractor for failing to obtain bidder- required bonding.
- Making efforts to assist interested DSBE's or DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.

In determining whether a bidder has made good faith efforts, take into account the performance of other bidders in meeting the contract. The City of Lake Charles will only award contracts to bidders determined to be responsive and responsible. Documentation furnished by a bidder will be subject to verification by the DBE support staff, as deemed necessary.

Section 9. - Credit towards goals.

No credit toward meeting DSBE or DBE goals will be allowed unless the DSBE or DBE is determined to be eligible by the DBE support staff. Bidders are strongly encouraged to contact the DBE support staff well in advance of the date set for receipt of offers in order to enable review of the proposed DSBE's or DBE's eligibility to participate in the DSBE or DBE program.

Only expenditures to DSBE's or DBE's that perform a commercially useful function may be counted toward goals; i.e., work actually performed, supervised, and managed by a certified DSBE or DBE. A firm shall be presumed not to be performing a commercially useful function if it further subcontracts a significantly greater portion of the work that would be expected based on normal industry practice. The DSBE or DBE may present evidence to the City to rebut this presumption.

The general contractor may credit toward the DSBE or DBE goal the full expenditures for materials and supplies provided that the DSBE or DBE is the manufacturer. Only sixty percent of the total dollar value may be credited for materials and supplies purchased from DSBE's or DBE's that are not manufacturers. In all instances, the DSBE or DBE must actually provide the materials and supplies.

None of the expenditures will be credited toward the DSBE or DBE goals if the DSBE or DBE performs no substantial service or is a passive conduit.

One hundred percent of the dollar value of the award/expenditure may be counted toward the goal if the DSBE or DBE supplier is a manufacturer; i.e., produces materials from raw materials, or substantially alters materials before resale.

The general contractor may count toward its DSBE or DBE goal one hundred percent of the cost of materials or supplies it obtains for use in a contract if the materials or supplies are obtained from an DSBE or DBE "regular dealer."

Awards/expenditures in contracts with businesses that are joint ventures should be counted on the basis of percentage ownership of the eligible DSBE or DBE in the joint venture. Where DSBE or DBE ownership is fifty-one percent or greater, one hundred percent of the dollar value is counted. The eligibility of a joint venture will be determined on a project-by-project basis

A general contractor may count toward its DSBE or DBE goals the following expenditures to DSBE or DBE firms that are not manufacturers or regular dealers:

- 1) The fees charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee is determined by the City of Lake Charles to be reasonable and not excessive as compared with fees customarily allowed for similar services;
- 2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in the materials and supplies;
- 3) The fees charged for providing, and bonds or insurance specifically required, for the performance of the contract.

Section 10. - Compliance by contractors.

General contractors will be required to meet all the objectives and actions as stated in these programs. Language to this effect shall be placed in each contract as let by the City, to participating third parties, and prime contractors.

Failure to satisfactorily meet these requirements may constitute a breach of contract and one or more administrative actions could occur, as listed in the bidder's checklist. Debarment from future City-let contacts may occur, if found appropriate, based on the evidence found during an investigation of failure to meet these said requirements.

Section 11. - Outreach/marketing.

The DBE support staff operating these City programs will continue to be involved with all of the local, regional, state, and federal small business support programs that are available to assist the program participants and prospects targeted by these programs. Through these outreach sources, the staff will gather information to link participants with other sources of programmatic support, technical assistance, and monetary support, for enhanced growth. The staff will also use the avenues of marketing available to solicit more participants to take advantage of these programs. Media sources will also be utilized to solicit more private sector support for these businesses.

Section 12. - Certification and compliance.

The DBE support staff is responsible for the overall implementation and monitoring of the City's SBOP and DBE programs.

Section 13. - Eligibility requirements for certification.

The determination of eligibility of small business status and small businesses owned and operated by socially and economically disadvantaged persons status under the City's SBOP shall be by self-certification, reserving to the Mayor of the City of Lake Charles or his designee, the right to verify a self-certification, taking into consideration those criteria set forth in this article. Small businesses, DSBE's, and DBE's that have been certified as such with the City shall be required to update any changes to their information or status with the City as well as recertify their status every three (3) years from the date of qualification.

Section 14. - DSBE, DBE and joint venture registration and certification.

A business' certification will last for three years before recertification is required, but they must submit an affidavit on an annual basis showing ownership and control. If there are any changes, the firm shall submit new information.

The DBE support staff will be responsible for obtaining completed registration and certification applications and all other information deemed necessary from each DSBE and DBE applicant, conducting on-site visits, and investigations pertaining to each applicant's status, and providing this information to the DBE support staff for certification or re-certification approval.

The City may also accept the certifications made by other agencies, if the certification criteria and process are equal to those in these programs. The SBOP requires prime contractors and service providers to make good faith efforts to contract with and replace a DSBE or DBE subcontractor that is unable to perform the contract successfully with another one certified by the City. Substitutions of DSBE or DBE subcontractors after bid opening and during contract performance must be approved by the DBE support staff. In these instances, the DBE support staff will verify the eligibility of the substitute firm.

The City shall encourage the establishment of joint ventures and mentor protégé programs between local companies. The DBE support staff will take the necessary steps to encourage and support these relationships between DSBE's, DBE's, and non-DBEs.

Any business that desires to participate as a DSBE or DBE will be required to complete and submit an application to the City. Any business that desires to participate as a joint venture will, in addition, be required to complete the appropriate application. The applications must be signed and notarized by the authorized representative of the business.

Section 15. - Unified certification programs.

The City is a participating agency in the Louisiana Unified Certification Program (UCP). The UCP must meet all the requirements and will follow all certification procedures and standards as applied in the DBE program and other governing directives.

The purpose of the UCP is to provide a "one-stop" process for recipients and firms seeking DBE certification within a state. Certifications by the UCP will be honored by all DOT fund recipients and will be considered a pre-certification; i.e., certifications that have been made final before the due date for bids or offers on a contract that the firm seeks to participate as a DBE.

The UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this plan), the information required by 49 CFR Part 26, Section 26.31. The directory shall be made available to the public electronically, on the Internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

Section 16. - Decertification procedures and appeals.

Whenever the City comes to believe that a firm with a current certification is no longer eligible, the firm will be afforded the rudiments of due process prior to revoking its eligibility. The steps to be used are:

- 1) A letter will be sent to the firm, stating that the City DBE support staff is contemplating decertification. A brief description of the reasons for the proposed action will be included.
- 2) The firm will be given the opportunity to respond in person and in writing to present information and arguments. An informal meeting or hearing may be part of the process, but a formal adversarial proceeding will not be used.
- 3) The review and final decision authority to remove a firm's eligibility will be made by the DBE Liaison.

When the City denies certification or completes a decertification, it shall advise the firm that an appeal may be filed within ninety (90) days of the decision with the Mayor or his/her designee for a hearing. An appeal must be in writing, dated and signed, and should be made after all administrative remedies with the City's DBE Liaison and support staff have been exhausted. Anyone aggrieved by a decision of the Mayor or his/her designee may file a request for a hearing before one of the City's Administrative Adjudication Hearing officers within sixty (60) days.

Section 17. - DBE directory.

The DSBE and DBE directory will be a comprehensive listing of all DSBE's and DBE's certified by the City of Lake Charles and or the UCP. It shall include, as a minimum, the following information: the name of the firm, its address, phone number, and the types of work the firm has been certified to perform. The directory shall be updated and published at least on a quarterly basis and be made available to contractors and the public upon request. Once a firm has been certified, between publications, at a minimum, the database shall be updated.

Section 18. - Reporting/program evaluation.

Reporting requirements for federally funded contracts will be accomplished in accordance with the operating administration (i.e. FAA, FTA, EPA, etc.). Each City department will ensure that accountability reports are accomplished as required and that a copy is provided to the City DBE support staff for content review.

The City DBE staff will be required to accomplish a quarterly participation report to better gauge results and future actions needed to ensure that the overall federal DBE goals and City goals are met. This report will be forwarded to the City Administrator, the Mayor, and the Clerk of the City Council.

Section 19. -Remedies for non-compliance.

Failure to carry out the requirements set forth herein after written notification by the City shall constitute a breach of contract, and in addition to any other corrective action allowed by law, contract, or city policy, may result in the rejection of the bid, termination of the contract, a deduction/withholding of all or any portion of payments due or to become due to the contractor from the contract funds until the non-compliance is cured, liquidated damages, suspension, debarment, or determination of non-responsibility, or other such remedy as the City deems appropriate.

THUS DONE AND SIGNED at the City of Lake Charles, on this 6th day of April, 2018.



**NICHOLAS E. HUNTER, MAYOR
CITY OF LAKE CHARLES, LOUISIANA**

Attachment 10

Regulations; 49 CFR Part 26

For a copy of the Regulations: 49 CFR Part 26, please contact the *City of Lake Charles* Legal Department at (337) 491-1523 for more information. It can also be found at the Code of Federal Regulations or any public Library.