

Compliance Portfolio

- **Required Contract Provisions for Federal-Aid Construction Contracts Regarding:**

- Equal Employment Opportunity (EEO)
 - ✓ Contractor's EEO Compliance Checklist for Federal-Aid Construction Contracts
- Labor Compliance
 - ✓ Project Site Labor & EEO Standards Interview Form
- On-the-Job Training (OJT) Participation (Goal Project)
 - ✓ Project Site Labor & EEO Standards OJT Interview Form
- Disadvantage Business Enterprise (DBE) Participation (Goal Project)
 - ✓ Commercially Useful Function (CUF) Form
- Small Business Element (SBE) Participation (Goal Project)
- Disadvantage Business Enterprise (DBE/SBE) Participation (No Goal Project)

- **Additional Materials located on the LA DOTD Website:**

- Posters for Project Site:
http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/OJT_Programs.aspx
- OJT Interview and Enrollment Forms:
http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/OJT_Programs.aspx
- Compliance Portfolio Package:
http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx

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Website:

http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx

LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will

implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any

account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional

classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State

apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee

program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than

one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph

3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each apprentice, trainee, and helper) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all

may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHIA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHIA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHIA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY; ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHIA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and

similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

Notice to all Personnel engaged on Federal-Aid Highway Projects

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 92-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions: (Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered

transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:** (Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

**Certification Regarding Debarment, Suspension,
Ineligibility and Voluntary Exclusion--Lower Tier
Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

**XII. CERTIFICATION REGARDING USE OF
CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any

Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**REQUIRED CONTRACT PROVISIONS FOR
DBE PARTICIPATION IN FEDERAL AID CONSTRUCTION CONTRACTS
(DBE GOAL PROJECT)**

A. AUTHORITY AND DIRECTIVE: The Code of Federal Regulations, Title 49, Part 26 (49 CFR Part 26) as amended and the Louisiana Department of Transportation and Development's (DOTD) Disadvantaged Business Enterprise (DBE) Program are hereby made a part of and incorporated by this reference into this contract. Copies of these documents are available, upon request, from DOTD Compliance Programs Office, P. O. Box 94245, Baton Rouge, LA 70804-9245.

B. POLICY: It is the policy of the DOTD that it shall not discriminate on the basis of race, color, national origin, or sex in the award of any United States Department of Transportation (US DOT) financially assisted contracts or in the administration of its DBE program or the requirements of 49 CFR Part 26. The DOTD shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The DBE program, as required by 49 CFR Part 26 and as approved by US 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 of failure to carry out the approved DBE program, the US DOT may impose sanctions as provided for under 49 CFR Part 26 and may in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).

C. DBE OBLIGATION: The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must carry out applicable requirements of 49 CFR Part 26 in the award and administration of US 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 DOTD deems appropriate.

The preceding policy and DBE obligation shall apply to this contract and shall be included in the requirements of any subcontract. Failure to carry out the requirements set forth therein shall constitute a breach of contract and, after notification by DOTD, may result in termination of the contract, a deduction from the contract funds due or to become due the contractor or other such remedy as DOTD deems appropriate. The contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial. The term DBE is inclusive of women business enterprises (WBE) and all obligations applicable to DBE shall apply to firms certified and listed as WBE.

D. FAILURE TO COMPLY WITH DBE REQUIREMENTS: All contractors and subcontractors are hereby advised that failure to carry out the requirements set forth above shall constitute a breach of contract and, after notification by DOTD may result in rejection of the bid; termination of the contract; a deduction from the contract funds due or to become due the contractor; or other such remedy as DOTD deems appropriate. Failure to comply with the DBE requirements shall include but not be limited to failure to meet the established goal and/or failure to submit documentation of good faith efforts; failure to exert a reasonable good faith effort (as determined by DOTD) to meet established goals; and failure to realize the DBE participation set forth on approved Form CS-6AAA and attachments. Failure to submit Form CS-6AAA and attachments and/or reasonable good faith efforts' documentation within the specified time requirements will result in the Department taking the actions specified in Heading G(6) below. The utilization of DBE is in addition to all other equal opportunity requirements of the contract. The contractor must include the provisions in Sections B, C and D of these provisions in subcontracts so that such provisions will be binding upon each subcontractor, regular dealer, manufacturer, consultant, or service agency.

E. ELIGIBILITY OF DBE: The DOTD has included as part of the solicitation of bids a current list containing the names of firms that have been certified as eligible to participate as DBEs on US DOT assisted contracts. This list is not an endorsement of the quality of performance of the firm but is simply an acknowledgment of the firm's eligibility as a DBE. This list indicates the project numbers and letting date for which this list is effective. Only DBEs listed on this list may be utilized to meet the established DBE goal for these projects.

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

(1) Credit will only be given for use of DBEs that are certified by the Louisiana Unified Certification Program. Certification of DBEs by other agencies is not recognized.

(2) The total value of subcontracts awarded for construction and services to an eligible DBE is counted toward the DBE goal provided the DBE performs a commercially useful function. The contractor is responsible for ensuring that the goal is met using DBEs that perform a commercially useful function.

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

(3) A DBE prime contractor may count only the contract amount toward DBE participation for work he/she actually performs and for which he/she is paid. Any subcontract amounts awarded to certified DBEs by a DBE prime will also be credited toward DBE participation provided the DBE subcontractor performs a commercially useful function.

(4) A contractor may count toward the DBE goal 100 percent of verified delivery fees paid to a DBE trucker. The DBE trucker must manage and supervise the trucking operations with its own employees and use equipment owned by the DBE trucker. No credit will be counted for the purchase or sale of material hauled unless the DBE trucker is also a DOTD certified DBE supplier. No credit will be counted unless the DBE trucker is an approved subcontractor.

(5) A contractor may count toward the DBE goal, when a DBE performs as a participant in a joint venture, the total dollar value of the contract equal to the distinct, clearly defined portion of work within the contract that the DBE performs with its own forces. The joint venture agreement must include a detailed breakdown of the following:

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

(6) A contractor may count toward the DBE goal only expenditures for materials and supplies obtained from DBE suppliers and manufacturers in accordance with the following:

- a. The DBE supplier assumes actual and contractual responsibility for the provision of materials and supplies.

b. The contractor may count 100 percent of expenditures made to a DBE manufacturer provided the DBE manufacturer operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

c. The contractor may count 60 percent of the expenditures to DBE suppliers, who are regular dealers but not manufacturers, provided the DBE supplier performs a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory, and selling materials regularly to the public. Dealers in bulk items such as steel, cement, aggregates and petroleum products are not required to maintain items in stock, but they must own or operate distribution equipment. The DBE supplier must be certified as such by DOTD.

d. A DBE may not assign or lease portions of its supply, manufactured product, or service agreement without the written approval of the DOTD.

(7) A contractor may count toward the DBE goal reasonable expenditures to DBE firms including fees and commissions charged for providing a bona fide service; fees charged for hauling materials unless the delivery service is provided by the manufacturer or regular dealer as defined above; and fees and commissions for providing any bonds or insurance specifically required for the performance of the contract.

(8) The contractor will not receive credit if the contractor makes direct payment to the material supplier. However, it may be permissible for a material supplier to invoice the contractor and DBE jointly and be paid by the contractor making remittance to the DBE firm and material supplier jointly. Prior approval by DOTD is required.

(9) With prior approval from the Compliance Programs Office, a DBE firm may lease equipment from a Prime Contractor. However, if a DBE firm leases equipment from a Prime Contractor, work performed with that equipment shall not be counted towards the achievement of the contract DBE goal. If a DBE firm has received approval from the Compliance Programs Office to lease a specialized piece of equipment from the prime contractor that they are currently performing work for on a specific project, goal credit will be decided in accordance with the Code of Federal Regulations.

Lease agreements are required for any equipment leased by a DBE subcontractor before its use on the project and the lease agreement must be related to that specific project. All lease agreements, including signatures, must be submitted to the Compliance Programs Office in advance of use on the project. Upon receipt of any completed lease agreements, including signatures, the Compliance Programs Office staff will review and render a decision, after Department process is completed.

(10) The contractor will not receive credit toward the DBE goal for any subcontracting arrangement contrived to artificially inflate the DBE participation, as determined by the Department.

G. AWARD DOCUMENTATION AND PROCEDURE: This project has specific DBE goal requirements set forth in the Special Provision for DBE Participation in Federal Aid Construction Contracts. The bidder by signing this bid certifies that:

(1) The goal for DBE participation prescribed in the special provisions shall be met or exceeded and arrangements have been made with certified DBE or good faith efforts made to meet the goal will be demonstrated.

(2) Affirmative actions have been taken to seek out and consider DBEs as potential subcontractors. Bidders must contact DBEs to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and must retain, on file, proper documentation to substantiate their good faith efforts.

(3) Form CS-6AAA, "Attachment to Form CS-6AAA", and, if necessary, good faith effort documentation must be submitted to the DOTD by 5:00 p.m. on the due date which is set forth in the "apparent bid results" and "bid results" posted on the Department's website. Submittals **must** be entered online at <http://wwwapps.dotd.la.gov/administration/compliance/cs6aaa/home.aspx>. If necessary, the Good Faith Effort

Documentation Form will also be filled out online at this time. Once reviewed and after the CS-6AAA is approved, an email will be sent back to the prime contractor to obtain the required signatures. After signatures are obtained, the entire document **must** then be sent electronically to dotdcs6aaacompliance@la.gov prior to 5:00 p.m. on the specified date required. The CS-6AAA form with original signatures must be submitted to the DOTD with all other documents also required for contract execution and approval.

Should a bidder protest or appeal any matter regarding the bidding or award of a contract in accordance with Subsection 102.13 of the 2006 Standard Specifications (Subsection 102.13 of the 2000 Louisiana Standard Specifications) after the scheduled time of bid opening, the Department will immediately suspend the time requirement for submission of Form CS-6AAA and Attachments until further notice and will notify all parties involved of the suspension. Once the protest has been resolved the Department will notify the low bidder and issue a date for submission of Form CS-6AAA and Attachments.

All attachments to Form CS-6AAA shall include:

- a. The names of the DBE subcontractors that will actually participate in meeting the contract goal; and
- b. A complete description of the work to be performed by the DBE including the specific items and portions of items of work, quantities, and unit price(s) of each item; and
- c. The total dollar value of each item that can be credited toward the contract goal; and
- d. Any assistance to be provided to the DBE; and
- e. The original signature of each DBE and the contractor attesting that negotiations are in progress and that it is the intention of the parties to enter into a subcontract within 60 calendar days from the time the contract is finalized between the contractor and DOTD.

It shall be the bidder's responsibility to ascertain the certification status of designated DBEs. An extension of time for submittal of Form CS-6AAA and Attachments will not be granted beyond the stated time. Questionable technical points will be cleared with the DOTD Compliance Programs Office within the time period allowed. If the documentation required is not provided in the time and manner specified, DOTD will take the actions specified in Heading (6) below.

(4) If the apparent low bidder is not able to meet the DBE goal, the DBE participation which has been secured to meet a portion of the goal shall be listed on the Form CS-6AAA and attachments. They must be completed and submitted in accordance with Heading (3) above by the specified date. Documentation of adequate good faith efforts to meet the remainder of the goal must be submitted with the forms. Examples of good faith efforts are shown in Section J.

The DOTD's evaluation of good faith efforts in the pre-award stage will focus primarily on efforts made prior to submittal of the bid. For consideration, good faith efforts shall include the requirements listed in these provisions as well as other data the contractor feels is relevant.

(5) Form CS-6AAA and attachments, and documentation of good faith efforts, when appropriate, will be evaluated by DOTD in the selection of the lowest responsible bidder. The information provided must be accurate and complete. The apparent low bidder's proposed attainment of the DBE goal and/or demonstration of good faith efforts will be considered in the award of the contract.

(6) An apparent low bidder's failure, neglect, or refusal to submit Form CS-6AAA and attachments committing to meet or exceed the DBE goal and/or documentation of good faith efforts, shall constitute just cause for the DOTD to reject the bid, pursue award to the next lowest bidder, or re-advertise the project. The original apparent low bidder will be declared irregular and will not be allowed to bid on the project should re-advertisement occur.

(7) The bidder has the right to appeal the DOTD's findings and rulings to the DOTD Chief Engineer. The bidder may present information to clarify the previously submitted documentation. The decision rendered by the DOTD Chief Engineer will be administratively final. There shall be no appeal to the US DOT. If the DOTD Chief Engineer does not rule in favor of the original apparent low bidder, the new apparent low bidder must submit, in detail, its subsequent proposed DBE participation within the time specified on the notification from the Project Control Engineer.

(8) Agreements between the bidder and the DBE, whereby the DBE agrees not to provide subcontracting quotations to other bidders, are prohibited.

H. POST AWARD COMPLIANCE

(1) If the contract is awarded on less than full DBE goal participation, such award will not relieve the contractor of the responsibility to continue exerting good faith efforts. The contractor must submit documentation of good faith efforts, which can be found at <http://wwwapps.dotd.la.gov/administration/compliance/cs6aaa/home.aspx>, with requests to sublet prior to approval of subcontracting work being performed on the project.

(2) The contractor shall establish a program which will effectively promote increased participation by DBE in the performance of contracts and subcontracts. The contractor shall also designate and make known to the DOTD a liaison officer who will be responsible for the administration of the contractor's DBE program.

(3) The contractor must enter into subcontracts or written agreements with the DBE identified on Form CS-6AAA and attachments for the kind and amount of work specified. The subcontracting requirements of the contract will apply. The contractor shall submit copies of subcontracts or agreements with DBEs to DOTD upon request.

(4) The contractor must keep each DBE informed of the construction progress schedule and allow each DBE adequate time to schedule work, stockpile materials, and otherwise prepare for the subcontract work.

(5) At any point during the project when it appears that the scheduled amount of DBE participation may not be achieved, the contractor must provide evidence demonstrating how the goal will be met.

(6) If the contractor is unable to demonstrate to the DOTD's satisfaction that it failed to achieve the scheduled DBE participation due to reasons other than quantitative under runs or elimination of items contracted to DBE and that good faith efforts have been used to obtain the scheduled contract participation, the DOTD may withhold an amount equal to the difference between the DBE goal and the actual DBE participation achieved as damages.

(7) When the DOTD has reason to believe the contractor, subcontractor, or DBE may not be operating in compliance with the terms of these DBE provisions, to include, but not be limited to the encouragement of fronting, brokering, or not providing a commercially useful function, the DOTD will conduct an investigation of such activities with the cooperation of the parties involved. If the DOTD finds that any person or entity is not in compliance, the DOTD will notify such person or entity in writing as to the specific instances or matters found to be in noncompliance.

At the option of the DOTD, the person or entity may be allowed a specified time to correct the deficiencies noted and to achieve compliance. In the event that the person or entity cannot achieve compliance, or fails or refuses to do so, the DOTD reserves the right to initiate administrative action against the contractor which may include but not be limited to terminating the contract; withholding a percentage of the contractor's next partial payment equal to the shortfall amount until corrective action is taken; or other action the DOTD deems appropriate. The contractor has the right to appeal the DOTD's finding and rulings to the DOTD Chief Engineer.

The contractor may present additional information to clarify that previously submitted. Any new information not included in the original submittal will not be used in the final determination. The decision rendered by the DOTD Chief Engineer will be administratively final.

(8) To ensure that the obligations under subcontracts awarded to subcontractors are met, the DOTD will review the contractor's efforts to promptly pay subcontractors for work performed in accordance with the executed subcontracts. The contractor must promptly pay subcontractors and suppliers, including DBE, their respective subcontract amount within 14 calendar days after the contractor receives payment from DOTD for the items satisfactorily performed by the subcontractors in accordance with Louisiana Revised Statute 9:2784. The contractor shall provide the DBE with a full accounting to include quantities paid and deductions made from the DBE's partial payment at the time the check is delivered. **Retainage may not be held by the contractor.** Delay or postponement of payment to the subcontractor may be imposed by the contractor only when there is evidence that the subcontractor has failed to pay its labor force and suppliers for materials received and used on the project. Delay or postponement of payment must have written approval by the Project Engineer. Failure to promptly pay subcontractors shall constitute a breach of contract and after notification by the DOTD may result in (1) a deduction from the contract funds due or to become due the contractor, (2) disqualification of a contractor as non-responsive, or (3) any other such remedy under the contract as DOTD deems appropriate. All subcontracting agreements made by the contractor shall include the current payment to subcontractors' provisions as incorporated in the contract. All disputes between contractors and subcontractors relating to payment of completed work shall be referred to the DBE/SBE Oversight Committee. Members of the DBE/SBE Oversight Committee are: the Deputy Chief Engineer; the DOTD Compliance Programs Director; and an FHWA Division Representative.

(9) The contractor must meet the requirements of Subsection 108.01 Subletting of Contract, and must submit DOTD Forms OMF-1A, Request to Sublet and OMF-2A, Subcontractor's EEO Certification. The OMF-1A and OMF-2A (if applicable) forms must be entered online at <https://www.wapps.dotd.la.gov/administration/compliance/omfweb/login.aspx>. After submittal, all signatures must be obtained and then the entire document must be scanned and emailed to dotdomflacompliance@la.gov for review and approval. These forms must be approved by DOTD before any subcontract work is performed. In addition, suppliers and/or truckers agreements must be turned in for those DBE truckers and/or suppliers that appear on the CS-6AAA. The forms can be accessed from the DOTD Compliance Section website at http://www.sps.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Admin_Unit.aspx.

(10) DOTD reserves the right to withhold any partial payment from the contractor when it is determined that a DBE is not performing a commercially useful function or that achievement of the goal is in jeopardy. Payment may be withheld in the amount of the DBE goal that is in jeopardy until either the contractor submits to DOTD a revised plan for achieving the contract goal and the plan is approved, or the DBE goal amount in question has been met.

(11) The DOTD will monitor the contractor's DBE involvement during the contract, the level of effort by the contractor in meeting or exceeding the goal requirements in the contract, the contractor's attempts to do so, and the efforts in soliciting such involvement. If, at the completion of the project, the contractor has failed to meet the DBE goal and has not demonstrated good faith efforts or obtained a waiver or reduction of the goal, DOTD will withhold an amount equal to the difference between the DBE goal and the actual DBE participation achieved as damages.

I. SUBSTITUTIONS OF DBE FIRMS AFTER AWARD

(1) The contractor must conform to the scheduled amount of DBE participation.

(2) Contract items designated to be performed by the DBE on Form CS-6AAA and attachments shall be performed by the designated DBE or DOTD approved substitute. Substitutions of named DBE shall be approved in writing by the DOTD Compliance Programs Section. Substituted DBE shall not commence work until the contractor is able to demonstrate that the listed DBE is unable to perform because of default, overextension on other jobs, or other acceptable justification. It is not intended that a contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for change.

Substitution of DBE will be allowed only when the DBE is unable to perform due to default, overextension on other jobs, or other similar justification. Evidence of good faith efforts exerted by the contractor must be submitted to DOTD for approval. Pay items of work eliminated from the project will not diminish the contractor's DBE participation.

(3) Under no circumstances will a contractor perform work originally designated to be performed by a DBE without prior written approval from the DOTD Compliance Programs Section.

(4) When a listed DBE is unwilling or unable to perform the items of work specified in the Form CS-6AAA and attachments, the contractor must immediately notify the DOTD Compliance Programs Section.

When a contractor's request to be relieved of the obligation to use the named DBE results in a DBE Goal shortfall, the contractor must immediately take steps to obtain another certified DBE to perform an equal amount of allowable credit work or make documented good faith efforts to do so. The new DBE's name and designated work must be submitted to the DOTD in accordance with Section H(9) above, prior to proceeding with the work.

If the contractor is unable to replace a defaulting DBE with another DBE for the applicable item, a good faith effort shall be made to subcontract other items to DBEs for the purpose of meeting the goal. The DOTD Compliance Programs Section will determine if the contractor made an acceptable good faith effort in awarding work to DBE firms. Any disputes concerning good faith efforts will be referred to the DBE Oversight Committee. The DOTD Compliance Programs Section may allow a waiver or adjustment of the goal as may be appropriate, depending on individual project circumstances.

J. GOOD FAITH EFFORTS: Good faith efforts are required by the contractor when the DBE goals established for a contract are not met, or at anytime during the contract when achievement of the DBE goal is in jeopardy. It is the contractor's responsibility to provide sufficient evidence for DOTD to ascertain the efforts made. The contractor must demonstrate adequate good faith efforts to meet the contract goal by utilizing DBE participation prior to award and during the life of the contract. Good faith efforts include personal contacts, follow-ups and earnest negotiations with DBEs. DOTD will consider, at a minimum, the following efforts as relevant, although this listing is not exclusive or exhaustive and other factors and types of efforts may be relevant:

(1) Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood of achieving the stated goal. It is the contractor's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of work or materials consistent with the availability of DBE subcontractors and suppliers to assure meeting the goal for DBE participation. Selections of portions of work are required to at least equal the DBE goal in the contract.

(2) Written notification at least 14 calendar days prior to bid opening which solicits a reasonable number of DBEs interested in participation in the contract as a subcontractor, regular dealer, manufacturer, or consultant for specific items of work. The contractor shall provide notice to a reasonable number of DBEs that their interest in the contract is being solicited, with sufficient time to allow the DBEs to participate effectively. The contractor shall seek DBEs in the same geographic area from which it generally seeks subcontractors for a given project. If the contractor cannot meet the goal using DBEs from the normal area, the contractor shall expand its search to a wider geographic area.

(3) Demonstrated efforts made to negotiate in good faith with interested DBEs for specific items of work include:

a. The names, addresses and telephone numbers of DBEs contacted. The dates of initial contact and whether initial solicitations of interest were followed up personally, by mail, or by phone to determine the DBE interest.

b. A description of the information provided to DBEs regarding the nature of the work, the plans and specifications and estimated quantities for portions of the work to be performed.

- c. A statement of why additional agreements with DBEs were not reached.
- d. Documentation of each DBE contacted but rejected and the reasons for rejection. All bids and quotations received from DBE subcontractors whether verbal or written, and the contractor's efforts to negotiate a reasonable price must be submitted. Rejecting a DBE's bid because it was not the lowest quotation received will not be a satisfactory reason without an acceptable explanation of how it was determined to be unreasonable. A statement that the DBE's quotation was more than the contractor's bid price for an item or items will not be acceptable.
- e. Copies of all bids and quotations received from DBE subcontractors and an explanation of why they were not used.
- f. Scheduling meetings to discuss proposed work or to walk the job-site with DBE.
- g. Informing DBE of any pre-bid conferences scheduled by the DOTD.
- h. Assisting DBE in obtaining bonding, insurance, or lines of credit required by the contractor.
- i. Evidence of DBEs contacted but rejected as unqualified, accompanied by reason for rejection based on a thorough investigation of the DBE's capabilities.
- j. Any additional information not included above which would aid the DOTD in evaluation of the contractor's good faith efforts.

(4) The following are examples of actions that will not be accepted as justification by the contractor for failure to meet DBE contract goals:

- a. Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
- b. Rejection of a DBE bid or quotation based on price alone.
- c. Failure to contract with a DBE because the DBE will not agree to perform items of work at the unit price bid.
- d. Failure to contract with a DBE because the contractor normally would perform all or most of the work in the contract.
- e. Rejection of a DBE as unqualified without sound reasons based on a thorough investigation of their capabilities.
- f. Failure to make more than mail solicitations.

K. RECORD KEEPING REQUIREMENTS: The contractor shall keep such records as are necessary for the DOTD to determine compliance with the DBE contract obligations. These records shall include the names of subcontractors, including DBEs; copies of subcontracts; the type of work being performed; documentation such as canceled checks and paid invoices verifying payment for work, services, and procurement; and documentation of correspondence, verbal contacts, telephone calls, and other efforts to obtain services of DBEs. When requested, the contractor shall submit all subcontracts and other financial transactions executed with DBEs in such form, manner and content as prescribed by DOTD. The DOTD reserves the right to investigate, monitor and/or review actions, statements, and documents submitted by any contractor, subcontractor, or DBE.

L. REPORTING REQUIREMENTS: The contractor must submit monthly reports on DBE involvement. At the conclusion of each estimate period the contractor must submit the Form CP-1A, Contractors Monthly DBE/SBE Participation, to the project engineer to verify actual payments to DBEs for the previous month's reporting period. These reports will be required until all DBE subcontracting activity is complete or the DBE Goal has been achieved. Reports are required regardless of whether or not DBE activity has occurred in the monthly reporting period. The CP-1A form can be obtained at http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Admin_Unit.aspx.

Upon completion of all DBE participation, the contractor must submit an original, notarized form CP-2A, DBE/SBE Final Report, to the DOTD Compliance Programs Section with a copy to the project engineer detailing all DBE subcontract payments. The CP-2A form can be obtained at http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Admin_Unit.aspx.

When the actual amount paid to DBEs is less than the award amount, a complete explanation of the difference is required. If the DBE goal is not met, documentation supporting good faith efforts must be submitted. Failure to submit the required reports will result in the withholding of partial payments to the contractor until the reports are submitted. All payments due to subcontractors which affect DBE goal attainment must be paid by the contractor before the DOTD releases the payment/performance/retainage bond.

The DOTD reserves the right to conduct an audit of DBE participation prior to processing the final estimate and at any time during the work.

M. APPLICABILITY OF PROVISIONS TO DBE BIDDERS: These provisions are applicable to all bidders including DBE bidders. The DBE bidder is required to perform at least 50 percent of the work of the contract with its own work force in accordance with the terms of the contract, normal industry practices, and the DOTD DBE Program. If the DBE bidder sublets any portion of the contract, the DBE bidder must comply with provisions regarding contractor and subcontractor relationships. A DBE prime contractor may count only the contract amount toward DBE participation for work that he/she actually performs and any amounts awarded to other certified DBE subcontractors that perform a commercially useful function.

DBE GOOD FAITH EFFORT DOCUMENTATION

The intent of this form is to document the good faith effort attempts made by the apparent low bidder in soliciting DBE firms to meet the DBE project goal. Please note that the project goal will not be waived and the contractor must make efforts to achieve the goal throughout the life of the contract.

Every work type where there is a certified DBE, the apparent low bidder must submit the form as follows:

- 1 available DBE – must contact 1 DBE _____
- 2-5 available DBEs – must contact 3 DBEs minimum
- 6-7 available DBEs – must contact 4 DBEs minimum
- 8-9 available DBEs – must contact 5 DBEs minimum
- 10 or more available DBEs – must contact 6 DBEs minimum

All information submitted on this form is subject to audit by the DBE Goal Committee

Date Submitted: _____

State Project Number: _____ Parish: _____

Contractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone Number: _____

Email Address: _____

Project Goal Percentage: _____

Commitment Percentage: _____

Unattained Percentage: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Bidder/Authorized Representative Signature: _____
Title: _____ Date: _____

DBE GOOD FAITH EFFORT DOCUMENTATION

Work Type Number	Description of Work, Service or Material	DBE Firm Name
Contact Name (First and Last)	Contact Date	Contact Method
1.		Contact Results
2.		Bid Amount
3.		
Comments:		
Work Type Number	Description of Work, Service or Material	DBE Firm Name
Contact Name (First and Last)	Contact Date	Contact Method
1.		Contact Results
2.		Bid Amount
3.		
Comments:		
Work Type Number	Description of Work, Service or Material	DBE Firm Name
Contact Name (First and Last)	Contact Date	Contact Method
1.		Contact Results
2.		Bid Amount
3.		
Comments:		

EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION

The following is a list of types of actions a bidder should take when documenting good faith efforts. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

SOLICITATION /ADVERTISEMENT EFFORTS - should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

NEGOTIATION EFFORTS - should include your efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. You are encouraged to break out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation you should make plans/specifications available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your good faith effort submittal which supports the price differential.

ASSISTANCE EFFORTS - should include your efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors are encouraged to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible with DOTD's prior approval. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.

ADDITIONAL EFFORTS - could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

**LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**REQUIRED CONTRACT PROVISIONS FOR
SBE PARTICIPATION IN FEDERAL AID CONSTRUCTION CONTRACTS
(SBE GOAL PROJECT)**

A. AUTHORITY AND DIRECTIVE: The Code of Federal Regulations, Title 49, Part 26.39 (49 CFR Part 26.39) as amended and the Louisiana Department of Transportation and Development's (DOTD) Small Business Element (SBE) Program are hereby made a part of and incorporated by this reference into this contract. Copies of these documents are available, upon request, from DOTD Compliance Programs Office, P. O. Box 94245, Baton Rouge, LA 70804-9245.

B. POLICY: It is the policy of the DOTD that it shall not discriminate on the basis of race, color, national origin, or sex in the award of any United States Department of Transportation (US DOT) financially assisted contracts or in the administration of its SBE program or the requirements of 49 CFR Part 26.39. The DOTD shall take all necessary and reasonable steps under 49 CFR Part 26.39 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The SBE program, as required by 49 CFR Part 26.39 and as approved by US 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 of failure to carry out the approved SBE program, the US DOT may impose sanctions as provided for under 49 CFR Part 26 and may in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C.3801 et seq.).

C. SBE OBLIGATION: The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US 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 DOTD deems appropriate.

The preceding policy and SBE obligation shall apply to this contract and shall be included in the requirements of any subcontract. Failure to carry out the requirements set forth therein shall constitute a breach of contract and, after notification by DOTD, may result in termination of the contract, a deduction from the contract funds due or to become due the contractor or other such remedy as DOTD deems appropriate.

D. FAILURE TO COMPLY WITH SBE REQUIREMENTS: All contractors and subcontractors are hereby advised that failure to carry out the requirements set forth above shall constitute a breach of contract and, after notification by DOTD may result in rejection of the bid; termination of the contract; a deduction from the contract funds due or to become due the contractor; or other such remedy as DOTD deems appropriate. Failure to comply with the SBE requirements shall include but not be limited to failure to meet the established goal and/or failure to submit documentation of good faith efforts; failure to exert a reasonable good faith effort (as determined by DOTD) to meet established goals; and failure to realize the SBE participation set forth on approved Form CS-6AAA and attachments. Failure to submit Form CS-6AAA and attachments and/or reasonable good faith efforts' documentation within the specified time requirements will result in the Department taking the actions specified in Heading G(6) below. The utilization of SBE is in addition to all other equal opportunity requirements of the contract. The contractor shall include the provisions in Sections B, C and D of these provisions in subcontracts so that such provisions will be binding upon each subcontractor, regular dealer, manufacturer, consultant, or service agency.

E. ELIGIBILITY OF SBE: The DOTD has included as part of the solicitation of bids a current list containing the names of firms that have been certified as eligible to participate as SBE on US DOT assisted contracts. This list is not an endorsement of the quality of performance of the firm but is simply an acknowledgment of the firm's

eligibility as a SBE. This list indicates the project numbers and letting date for which this list is effective. Only SBE listed on this list may be utilized to meet the established SBE goal for these projects.

F. COUNTING SBE PARTICIPATION TOWARD SBE GOALS: SBE participation toward attainment of the goal will be credited on the basis of total subcontract prices agreed to between the contractor and subcontractors for the contract items or portions of items being sublet as reflected on FormCS-6AAA and attachments, in accordance with the DOTD SBE Program, and the following criteria.

(1) Credit will only be given for use of SBE that are certified by the Louisiana Department of Transportation and Development, City of Baton Rouge and Regional Transit Authority.

(2) The total value of subcontracts awarded for construction and services to an eligible SBE is counted toward the SBE goal provided the SBE performs a commercially useful function. The contractor is responsible for ensuring that the goal is met using SBE that perform a commercially useful function.

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

(3) A SBE prime contractor may count only the contract amount toward SBE participation for work he/she actually performs and for which he/she is paid. Any subcontract amounts awarded to certified SBE by a SBE prime will also be credited toward SBE participation provided the SBE subcontractor performs a commercially useful function.

(4) A contractor may count toward the SBE goal 100 percent of verified delivery fees paid to a SBE trucker. The SBE trucker must manage and supervise the trucking operations with its own employees and use equipment owned by the SBE trucker. No credit will be counted for the purchase or sale of material hauled unless the SBE trucker is also a DOTD certified SBE supplier. No credit will be counted unless the SBE trucker is an approved subcontractor.

(5) A contractor may count toward the SBE goal only expenditures for materials and supplies obtained from SBE suppliers and manufacturers in accordance with the following:

a. The SBE supplier assumes actual and contractual responsibility for the provision of materials and supplies.

b. The contractor may count 100 percent of expenditures made to a SBE manufacturer provided the SBE manufacturer operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

c. The contractor may count 60 percent of the expenditures to SBE suppliers who are regular dealers but not manufacturers, provided the SBE supplier performs a commercially useful function in the supply process including buying the materials or supplies, maintaining an inventory, and selling materials regularly to the public. Dealers in bulk items such as steel, cement, aggregates and petroleum products are not required to maintain items in stock, but they must own or operate distribution equipment. The SBE supplier shall be certified as such by DOTD.

d. A SBE may not assign or lease portions of its supply, manufactured product, or service agreement without the written approval of the DOTD.

(6) A contractor may count toward the SBE goal reasonable expenditures to SBE firms including fees and commissions charged for providing a bona fide service; fees charged for hauling materials unless the delivery service is provided by the manufacturer or regular dealer as defined above; and fees and commissions for providing any bonds or insurance specifically required for the performance of the contract.

(7) The contractor will not receive credit if the contractor makes direct payment to the material supplier. However, it may be permissible for a material supplier to invoice the contractor and SBE jointly and be paid by the contractor making remittance to the SBE firm and material supplier jointly. Prior approval by DOTD is required.

(8) The contractor will not receive credit toward the SBE goal for any subcontracting arrangement contrived to artificially inflate the SBE participation.

G. AWARD DOCUMENTATION AND PROCEDURE: This project has specific SBE goal requirements set forth in the Special Provision for SBE Participation in Federal Aid Construction Contracts. The bidder by signing this bid certifies that:

(1) The goal for SBE participation prescribed in the special provisions shall be met or exceeded and arrangements have been made with certified SBE or good faith efforts made to meet the goal will be demonstrated.

(2) Affirmative actions have been taken to seek out and consider SBE as potential subcontractors. Bidders shall contact SBE to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain, on file, proper documentation to substantiate their good faith efforts.

(3) (3) Form CS-6AAA, "Attachment to Form CS-6AAA", and, if necessary, good faith effort documentation shall be submitted to the DOTD by the due date which is set forth in the "apparent bid results" and "bid results" posted on the Department's website. Submittals should be entered online at <http://www.dotd.la.gov/administration/compliance/CS-6AAA/home.aspx>. Once reviewed and after the CS-6AAA is approved, an email will be sent back to the prime contractor to obtain the required signatures. After signatures are obtained the form can then be sent electronically to dotdCS-6AAAcompliance@la.gov. The CS-6AAA form with original signatures must be submitted to the DOTD Contract and Specifications with those documents required for contract execution and approval.

Should a bidder protest or appeal any matter regarding the bidding or award of a contract in accordance with Subsection 102.13 of the 2006 Standard Specifications (Subsection 102.13 of the 2000 Louisiana Standard Specifications) after the scheduled time of bid opening, the Department will immediately suspend the time requirement for submission of Form CS-6AAA and Attachments until further notice and will notify all parties involved of the suspension. Once the protest has been resolved the Department will notify the low bidder and issue a date for submission of Form CS-6AAA and Attachments.

All attachments to Form CS-6AAA shall include:

- a. The names of SBE subcontractors that will actually participate in meeting the contract goal; and
- b. A complete description of the work to be performed by the SBE including the specific items or portions of items of work, quantities, and unit price(s) of each item; and
- c. The total dollar value of each item that can be credited toward the contract goal; and
- d. Any assistance to be provided to the SBE; and

- e. The original signature of each SBE and the contractor attesting that negotiations are in progress and that it is the intention of the parties to enter into a subcontract within 60 calendar days from the time the contract is finalized between the contractor and DOTD.

It shall be the bidder's responsibility to ascertain the certification status of designated SBEs. An extension of time for submittal of Form CS-6AAA and Attachments will not be granted beyond the stated time. Questionable technical points will be cleared with the DOTD Compliance Programs Office within the time period allowed. If the documentation required is not provided in the time and manner specified, DOTD will take the actions specified in Heading (6) below.

(4) If the apparent low bidder is not able to meet the SBE goal, the SBE firms that can meet a portion of the goal shall be listed on the form CS-6AAA. Form CS-6AAA and attachments shall be completed and submitted in accordance with Heading (3) above by the specified date. Form CS-6AAA shall indicate the SBE participation which has been secured along with documentation of good faith efforts. The apparent low bidder shall document and submit justification stating why the goal could not be met and demonstrate the good faith efforts as shown in Section J.

The DOTD's evaluation of good faith efforts in the pre-award stage will focus only on efforts made prior to submittal of the bid. For consideration, good faith efforts shall include the requirements listed in these provisions as well as other data the contractor feels is relevant.

(5) Form CS-6AAA and attachments, and documentation of good faith efforts, when appropriate, will be evaluated by DOTD in the selection of the lowest responsible bidder. The information provided shall be accurate and complete. The apparent low bidder's proposed attainment of the SBE goal and/or demonstration of good faith efforts will be considered in the award of the contract.

(6) An apparent low bidder's failure, neglect, or refusal to submit Form CS-6AAA and attachments committing to meet or exceed the SBE goal and/or documentation of good faith efforts, shall constitute just cause for the DOTD to reject the bid, pursue award to the next lowest bidder, or re-advertise the project. The original apparent low bidder will be declared irregular and will not be allowed to bid on the project should re-advertisement occur.

(7) The bidder has the right to appeal the DOTD's findings and rulings to the DOTD Chief Engineer. The bidder may present information to clarify the previously submitted documentation. The decision rendered by the DOTD Chief Engineer will be administratively final. There shall be no appeal to the US DOT. If the DOTD Chief Engineer does not rule in favor of the original apparent low bidder, the new apparent low bidder shall submit, in detail, its subsequent proposed DBE participation within the time specified on the notification from the Project Control Engineer.

(8) Agreements between the bidder and the SBE, whereby the SBE agrees not to provide subcontracting quotations to other bidders, are prohibited.

H. POST AWARD COMPLIANCE

(1) If the contract is awarded on less than full SBE goal participation, such award will not relieve the contractor of the responsibility to continue exerting good faith efforts. The contractor shall submit documentation of good faith efforts with requests to sublet prior to approval of subcontracting work being performed on the project.

(2) The contractor shall establish a program which will effectively promote increased participation by SBE in the performance of contracts and subcontracts. The contractor shall also designate and make known to the DOTD a liaison officer who will be responsible for the administration of the contractor's SBE program.

(3) The contractor shall enter into subcontracts or written agreements with the SBE identified on Form CS-6AAA and attachments for the kind and amount of work specified. The subcontracting requirements of the contract will apply. The contractor shall submit copies of subcontracts or agreements with SBE to DOTD upon request.

(4) The contractor shall keep each SBE informed of the construction progress schedule and allow each SBE adequate time to schedule work, stockpile materials, and otherwise prepare for the subcontract work.

(5) At any point during the project when it appears that the scheduled amount of SBE participation may not be achieved, the contractor shall provide evidence demonstrating how the goal will be met.

(6) If the contractor is unable to demonstrate to the DOTD's satisfaction that it failed to achieve the scheduled SBE participation due to reasons other than quantitative under runs or elimination of items contracted to SBE and that good faith efforts have been used to obtain the scheduled contract participation, the DOTD may withhold an amount equal to the difference between the SBE goal and the actual SBE participation achieved as damages.

(7) When the DOTD has reason to believe the contractor, subcontractor, or SBE may not be operating in compliance with the terms of these SBE provisions, to include, but not be limited to the encouragement of fronting, brokering, or not providing a commercially useful function, the DOTD will conduct an investigation of such activities with the cooperation of the parties involved. If the DOTD finds that any person or entity is not in compliance, the DOTD will notify such person or entity in writing as to the specific instances or matters found to be in noncompliance.

At the option of the DOTD, the person or entity may be allowed a specified time to correct the deficiencies noted and to achieve compliance. In the event that the person or entity cannot achieve compliance, or fails or refuses to do so, the DOTD reserves the right to initiate administrative action against the contractor which may include but not be limited to terminating the contract; withholding a percentage of the contractor's next partial payment equal to the shortfall amount until corrective action is taken; or other action the DOTD deems appropriate. The contractor has the right to appeal the DOTD's finding and rulings to the DOTD Chief Engineer.

The contractor may present additional information to clarify that previously submitted. Any new information not included in the original submittal will not be used in the final determination. The decision rendered by the DOTD Chief Engineer will be administratively final.

(8) To ensure that the obligations under subcontracts awarded to subcontractors are met, the DOTD will review the contractor's efforts to promptly pay subcontractors for work performed in accordance with the executed subcontracts. The contractor shall promptly pay subcontractors and suppliers, including SBE, their respective subcontract amount within 14 calendar days after the contractor receives payment from DOTD for the items satisfactorily performed by the subcontractors in accordance with Louisiana Revised Statute 9:2784. The contractor shall provide the SBE with a full accounting to include quantities paid and deductions made from the SBE's partial payment at the time the check is delivered. Retainage may not be held by the contractor. Delay or postponement of payment to the subcontractor may be imposed by the contractor only when there is evidence that the subcontractor has failed to pay its labor force and suppliers for materials received and used on the project. Delay or postponement of payment must have written approval by the Project Engineer. Failure to promptly pay subcontractors or to release subcontractors' retainage shall constitute a breach of contract and after notification by the DOTD may result in (1) a deduction from the contract funds due or to become due the contractor, (2) disqualification of a contractor as non-responsive, or (3) any other such remedy under the contract as DOTD deems appropriate. All subcontracting agreements made by the contractor shall include the current payment to sub-contractors provisions as incorporate in the contract. All disputes between contractors and subcontractors relating to payment of completed work or retainage shall be referred to the SBE Oversight Committee. Members of the SBE Oversight Committee are: the Deputy Chief Engineer; the DOTD Compliance Programs Director; and a FHWA Division Representative.

(9) The contractor shall meet the requirements of Subsection 108.01 Subletting of Contract, and shall submit DOTD Forms OMF-1A, Request to Sublet and OMF-2A, Subcontractor's EEO Certification. These forms shall be approved by DOTD before any subcontract work is performed.

(10) DOTD reserves the right to withhold any partial payment from the contractor when it is determined that a SBE is not performing a commercially useful function or that achievement of the goal is in jeopardy. Payment may be withheld in the amount of the SBE goal that is in jeopardy until either the contractor submits to DOTD a revised plan for achieving the contract goal and the plan is approved, or the SBE goal amount in question has been met.

(11) The DOTD will monitor the contractor's SBE involvement during the contract, the level of effort by the contractor in meeting or exceeding the goal requirements in the contract, the contractor's attempts to do so, and the efforts in soliciting such involvement. If, at the completion of the project, the contractor has failed to meet the SBE goal and has not demonstrated good faith efforts or obtained a waiver or reduction of the goal, DOTD will withhold an amount equal to the difference between the SBE goal and the actual SBE participation achieved as damages.

I. SUBSTITUTIONS OF SBE FIRMS AFTER AWARD

(1) The contractor shall conform to the scheduled amount of SBE participation.

(2) Contract items designated to be performed by the SBE on Form CS-6AAA and attachments shall be performed by the designated SBE or DOTD approved substitute. Substitutions of named SBE shall be approved in writing by the DOTD Compliance Programs Section. Substituted SBE shall not commence work until the contractor is able to demonstrate that the listed SBE is unable to perform because of default, overextension on other jobs, or other acceptable justification. It is not intended that a contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for change. Substitution of SBE will be allowed only when the SBE is unable to perform due to default, overextension on other jobs, or other similar justification. Evidence of good faith efforts exerted by the contractor shall be submitted to DOTD for approval. Pay items of work eliminated from the project will not diminish the contractor's SBE participation.

(3) Under no circumstances will a contractor perform work originally designated to be performed by a SBE without prior written approval from the DOTD Compliance Programs Section.

(4) When a listed SBE is unwilling or unable to perform the items of work specified in the Form CS-6AAA and attachments, the contractor shall immediately notify the DOTD Compliance Programs Section.

When a contractor's request to be relieved of the obligation to use the named SBE results in a SBE Goal shortfall, the contractor shall immediately take steps to obtain another certified SBE to perform an equal amount of allowable credit work or make documented good faith efforts to do so. The new SBE's name and designated work shall be submitted to the DOTD for approval using Form OMF-1A, Request to Sublet, prior to proceeding with the work.

If the contractor is unable to replace a defaulting SBE with another SBE for the applicable item, a good faith effort shall be made to subcontract other items to SBE for the purpose of meeting the goal. The DOTD Compliance Programs Section will determine if the contractor made an acceptable good faith effort in awarding work to SBE firms. Any disputes concerning good faith efforts will be referred to the SBE Oversight Committee. The DOTD Compliance Programs Section may allow a waiver or adjustment of the goal as may be appropriate, depending on individual project circumstances.

J. GOOD FAITH EFFORTS: Good faith efforts are required by the contractor when the SBE goals established for a contract are not met, or at anytime during the contract when achievement of the SBE goal is in jeopardy. It is the contractor's responsibility to provide sufficient evidence for DOTD to ascertain the efforts made. The contractor shall demonstrate good faith efforts to maximize participation by SBE prior to award and during the life of the contract. Good faith efforts include personal contacts, follow-ups and earnest negotiations with ABE. DOTD will

consider, at a minimum, the following efforts as relevant, although this listing is not exclusive or exhaustive and other factors and types of efforts may be relevant:

(1) Efforts made to select portions of the work to be performed by SBE in order to increase the likelihood of achieving the stated goal. It is the contractor's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of work or materials consistent with the availability of SBE subcontractors and suppliers to assure meeting the goal for SBE participation. Selections of portions of work are required to at least equal the SBE goal in the contract.

(2) Written notification at least 14 calendar days prior to bid opening which solicits a reasonable number of SBE interested in participation in the contract as a subcontractor, regular dealer, manufacturer, or consultant for specific items of work. The contractor shall provide notice to a reasonable number of SBE that their interest in the contract is being solicited, with sufficient time to allow the SBE to participate effectively. The contractor shall seek SBE in the same geographic area from which it generally seeks subcontractors for a given project. If the contractor cannot meet the goal using SBE from the normal area, the contractor shall expand its search to a wider geographic area.

(3) Demonstrated efforts made to negotiate in good faith with interested SBE for specific items of work include:

- a. The names, addresses and telephone numbers of SBE contacted. The dates of initial contact and whether initial solicitations of interest were followed up personally, by mail, or by phone to determine the SBE interest.
- b. A description of the information provided to SBE regarding the nature of the work, the plans and specifications and estimated quantities for portions of the work to be performed.
- c. A statement of why additional agreements with SBE were not reached.
- d. Documentation of each SBE contacted but rejected and the reasons for rejection. All bids and quotations received from SBE subcontractors whether verbal or written, and the contractor's efforts to negotiate a reasonable price shall be submitted. Rejecting a SBE's bid because it was not the lowest quotation received will not be satisfactory reason without an acceptable explanation of how it was determined to be unreasonable. A statement that the SBE's quotation was more than the contractor's bid price for an item or items will not be acceptable.
- e. Copies of all bids and quotations received from SBE subcontractors and an explanation of why they were not used.
- f. Scheduling meetings to discuss proposed work or to walk the job-site with SBE.
- g. Informing SBE of any pre-bid conferences scheduled by the DOTD.
- h. Assisting SBE in obtaining bonding, insurance, or lines of credit required by the contractor.
- i. Evidence of SBE contacted but rejected as unqualified, accompanied by reason for rejection based on a thorough investigation of the SBE's capabilities.
- j. Any additional information not included above which would aid the DOTD in evaluation of the contractor's good faith efforts.

(4) The following are examples of actions that will not be accepted as justification by the contractor for failure to meet SBE contract goals:

- a. Failure to contract with a SBE solely because the SBE was unable to provide performance and/or payment bonds.

- b. Rejection of a SBE bid or quotation based on price alone.
- c. Failure to contract with a SBE because the SBE will not agree to perform items of work at the unit price bid.
- d. Failure to contract with a SBE because the contractor normally would perform all or most of the work in the contract.
- e. Rejection of a SBE as unqualified without sound reasons based on a thorough investigation of their capabilities.
- f. Failure to make more than mail solicitations.

K. RECORD KEEPING REQUIREMENTS: The contractor shall keep such records as are necessary for the DOTD to determine compliance with the SBE contract obligations. These records shall include the names of subcontractors, including SBE; copies of subcontracts; the type of work being performed; documentation such as canceled checks and paid invoices verifying payment for work, services, and procurement; and documentation of correspondence, verbal contacts, telephone calls, and other efforts to obtain services of SBE. When requested, the contractor shall submit all subcontracts and other financial transactions executed with SBE in such form, manner and content as prescribed by DOTD. The DOTD reserves the right to investigate, monitor and/or review actions, statements, and documents submitted by any contractor, subcontractor, or SBE.

L. REPORTING REQUIREMENTS: The contractor shall submit monthly reports on SBE involvement. At the conclusion of each estimate period the contractor shall submit the Form CP-1A, CONTRACTORS MONTHLY SBE PARTICIPATION, to the project engineer to verify actual payments to SBE for the previous month's reporting period. These reports will be required until all SBE subcontracting activity is complete or the SBE Goal has been achieved. Reports are required regardless of whether or not SBE activity has occurred in the monthly reporting period.

Upon completion of all SBE participation, the contractor shall submit the Form CP-2A, SBE FINAL REPORT, to the DOTD Compliance Programs Section with a copy to the project engineer detailing all SBE subcontract payments. When the actual amount paid to SBE is less than the award amount, a complete explanation of the difference is required. If the DBE goal is not met, documentation supporting good faith efforts shall be submitted. Failure to submit the required reports will result in the withholding of partial payments to the contractor until the reports are submitted. All payments due subcontractors affecting SBE goal attainment, including retainage, shall be paid by the contractor before the DOTD releases the payment/performance/retainage bond.

The DOTD reserves the right to conduct an audit of SBE participation prior to processing the final estimate and at any time during the work.

M. APPLICABILITY OF PROVISIONS TO SBE BIDDERS: These provisions are applicable to all bidders including SBE bidders. The SBE bidder is required to perform at least 50 percent of the work of the contract with its own work force in accordance with the terms of the contract, normal industry practices, and the DOTD SBE Program. If the SBE bidder sublets any portion of the contract, the SBE bidder shall comply with provisions regarding contractor and subcontractor relationships. A SBE prime contractor may count only the contract amount toward SBE participation for work that he/she actually performs and any amounts awarded to other certified SBE subcontractors that perform a commercially useful function.

LOUISIANA
DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
REQUIRED CONTRACT PROVISIONS FOR
DBE/SBE PARTICIPATION IN FEDERAL AID CONSTRUCTION
CONTRACTS
(DBE/SBE NO GOAL PROJECT)

A. AUTHORITY AND DIRECTIVE: The Code of Federal Regulations, Title 49, Part 26 (49 CFR 26) as amended and the Louisiana Department of Transportation and Development's (DOTD) Disadvantaged Business Enterprise (DBE) and Small Business Element (SBE) Programs, are hereby made a part of and incorporated by reference into this contract. Copies of these documents are available upon request, from DOTD, Compliance Programs Office, P. O. Box 94245, Baton Rouge, LA 70804-9245.

B. POLICY: It is the policy of the DOTD that it shall not discriminate on the basis of race, color, national origin, or sex in the award of any United States Department of Transportation (US DOT) financially assisted contracts or in the administration of its DBE/SBE programs or the requirements of 49 CFR Part 26. The DOTD shall take all necessary and reasonable steps under 49 CFR Parts 26 to ensure nondiscrimination in the award and administration of US DOT assisted contracts. The DBE/SBE programs, as required by 49 CFR Part 26 and as approved by US 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 of failure to carry out the approved DBE/SBE programs, the US DOT may impose sanctions as provided for under 49 CFR Parts 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).

C. DBE/SBE OBLIGATION: The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US 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 DOTD deems appropriate.

The preceding policy and DBE/SBE obligation shall apply to this contract and shall be included in the requirements of any subcontract. Failure to carry out the requirements set forth therein shall constitute a breach of contract and, after notification by DOTD, may result in termination of the contract, a deduction from the contract funds due or to become due the contractor or other such remedy as DOTD deems appropriate. The contractor is encouraged to use the services offered by banks in the community which are owned and controlled by minorities or women when feasible and beneficial.

The terms DBE/SBE are inclusive of women business enterprises (WBE) and all obligations applicable to DBE/SBE shall apply to firms certified and listed as WBE.

D. SPECIFIC CONTRACTOR REQUIREMENTS: This project has not been selected for a specific DBE/SBE goal; however, the contractor is required to meet the following obligations and by signing this bid gives the assurances that:

(1) The contractor shall not discriminate on the basis of race, color, national origin, or sex in subcontracting work on this project.

(2) The contractor shall promptly pay subcontractors and suppliers their respective subcontract amounts within 14 calendar days after the contractor receives payment from DOTD for the items of work performed by the subcontractors in accordance with Louisiana Revised Statute 9:2784. Retainage may not be withheld.

a. Delay or postponement of payment to the subcontractor may be imposed by the contractor only when there is evidence that the subcontractor has failed to pay its labor force and suppliers for materials received and used on the project. Delay or postponement must have written approval by the Project Engineer.

(3) The contractor shall submit DOTD Forms OMF-1A, Request to Sublet, and OMF-2A, Subcontractor's EEO Certification and have them approved by the DOTD prior to any subcontracting work being performed. The requirements of Subsection 108.01, Subletting of Contract, of the Project Specifications shall be met.

(4) The contractor understands that these provisions are applicable to all bidders including DBE/SBE bidders.

**LA DOTD
DBE COMMERCIALLY USEFUL FUNCTION (CUF) FORM**

Project No. _____	Date: _____
Prime Contractor: _____	DBE Subcontractor: _____
Prime Foreman/Supt. _____	DBE Foreman/Supt: _____
DBE Start Date: _____	DBE Expected Completion: _____

DBE's Foreman/Superintendent

Exclusively employed by DBE? Y N How Long? _____ Shown of DBE Payroll? Y N
Who issues paycheck? _____ Reports Directly to: _____
Who Hires/Fires or handles major decisions? _____
Prior Employer? _____ How Long? _____

DBE's Employees

Have any employees worked for the prime/other sub on this job? Y N Who? _____
Exclusively employed by DBE? Y N Shown on DBE Payroll? Y N Who issues paycheck? _____
Reports directly to: _____ Comments: _____

DBE's Material & Equipment

Is DBE furnishing & installing material? Y N Who provides the material used? _____
Affiliate of Prime? Y N Who delivers material? _____ Who accepts it? _____
Does DBE own equipment? Y N Lease agreement? Y N Lessee: _____
Whose name/logo? _____ Whose employees operate? _____
Comments: _____

DBE'S WORK PERFORMANCE

Has any other contractor performed work committed to the DBE? Y N Who? _____
What work items were performed by the other contractor? _____
Has the DBE owner been present on the job site? Y N How often _____
Does the DBE appear to have control over their Work? Y N Equipment? Y N Employees? Y N
Based upon the above, do you believe this DBE contractor is an independent business; executing a distinct element of work; and actually performing, managing, and supervising the work specified in their contract? _____
If the DBE sub is not performing a CUF, what action was taken? _____
Did this action correct the deficiency? Y N Has Compliance Programs been notified of any problem? Y N
Comments pertaining to the performance or conduct of the DBE company). _____
Has LADOTD Compliance Programs Office been notified of any problem(s) identified in this report? Yes No _____
Comments: _____

Reviewed by: _____ Title _____ Date _____

**CONTRACTOR'S EEO COMPLIANCE CHECKLIST
FOR
FEDERAL-AID CONSTRUCTION PROJECTS**

CONTRACT REQUIREMENTS - SPECIFIC EEO RESPONSIBILITIES

___ 1. **GENERAL** (be aware of authority for provisions, the need to cooperate with state and federal government, and scope of coverage)

___ 2. **EEO POLICY** (develop company EEO policy statement and have a positive continuing program)

___ 3. **EEO OFFICER** (appoint EEO Officer and notify DOTD of appointment)

___ 4. **DISSEMINATION OF POLICY** (internally and externally)

___ meet with key personnel before project begins and then no less often than every 6 months

___ orient new supervisor as to contractor's EEO obligations within 30 days

___ meet periodically with all employees, provide copy of EEO policy, etc.

___ post policy at home office and project site/ include notices covering employee referrals, training program information, and identification of EEO Officer and contact information

___ 5. **RECRUITMENT** (exert good faith efforts to achieve and maintain acceptable representation of minorities and females when vacancies occur in the work force)

___ include "An Equal Opportunity Employer" notation in all ads

___ conduct systematic and direct recruitment (identify sources of potential minority and female employees, establish referral procedures, and contact sources)

___ encourage present employees to refer minority and female applicants through posting notices and discussion with employees

___ 6. **PERSONNEL ACTIONS** (must ensure nondiscrimination in wages, working conditions, employee benefits, hiring, upgrading, promotion, transfer, demotion, layoff, and termination)

___ periodically review selected personnel actions and spread of wages

___ conduct project site inspections

___ ensure EEO policy, EEO poster and other required notices are posted

___ investigate complaints of alleged discrimination

___ 7. **TRAINING AND PROMOTION** (if the project and work force can support these actions)

___ fulfill Training Special Provisions if opt to train under the contract

- provide formal and informal training when appropriate
- advise employees and applicants of available training programs
- periodically review the training and promotion potential of minority and female employees and encourage eligible employees to apply

8. UNIONS (use best efforts to obtain the cooperation of unions to increase opportunities and to effect referrals of minority group and female employees)

- cannot rely on unions as sole referral source as they are only given first opportunity to fill requests for referrals
- conduct independent recruitment if unions are unable to provide a reasonable flow of minority and female referrals within the collective bargaining agreement time limit

9. SUBCONTRACTING (use best efforts to solicit bids from and utilize minority group and female subcontractors with meaningful minority group and female representation)

- comply with DBE requirements if contract has a DBE goal
- ensure subcontractor compliance with EEO obligations
- include all EEO provisions of prime contract in all subcontracts of \$10,000 or more in value
- furnish Required Contract Provisions (FHWA-1273) to material suppliers of \$10,000 or more in value and make binding on agreement

10. RECORDS AND REPORTS (as required to document actions and determine compliance)

- must maintain records for at least 3 years following completion of work or longer if necessary
- must submit Annual EEO Report (Form FHWA-1391), when applicable, by August 15 of each year according to instructions provided by Project Engineers

The above checklist is provided as a guideline for contractors in complying with EEO contract provisions. For assistance please contact:

Tanya St. Angelo - Contract Compliance Program Manager
Compliance Programs Section - DOTD Headquarters/305 C
Telephone: (225) 379-1361
Fax: (225) 379-1865
Email: Tanya.StAngelo@la.gov

PROJECT SITE LABOR & EEO STANDARDS INTERVIEW

STATE PROJECT NUMBER: _____ DATE: _____

F.A.P. NUMBER: _____

CONTRACTOR: _____ PRIME: _____ SUB: _____

EMPLOYEE'S NAME: _____ S.S. NUMBER: _____

EMPLOYEE'S ADDRESS: _____

LABOR COMPLIANCE:

- 1. What is your job classification? _____
- 2. What is your hourly rate of pay? _____
- 3. Have you seen the wage rates posted on the job site? YES _____ NO _____
- 4. Do you ever work more than 40 hours a week? YES _____ NO _____
- 5. Do you receive time and a half for overtime? YES _____ NO _____
- 6. Were you ever underpaid on this project? YES _____ NO _____
- 7. Have back wages due been satisfied? YES _____ NO _____
- 8. Do you feel you are being paid properly? YES _____ NO _____

EQUAL EMPLOYMENT OPPORTUNITY:

- 9. Have you seen the posters on EEO? YES _____ NO _____
- 10. Do you know who the Company EEO Officer is? YES _____ NO _____
- 11. Were you given a written copy of the Company's EEO Policy? YES _____ NO _____
- 12. Do you have meetings to explain the Company's EEO Policy? YES _____ NO _____
- 13. Have you ever put in a complaint about discrimination? YES _____ NO _____
- 14. Do you feel that, in general, all workers on this project receive equal treatment, regardless of their race, religion, etc? YES _____ NO _____
- 15. Other questions or comments: _____

INTERVIEWER

For use of payroll checkers: Is the above information in agreement with payroll data and contract requirements? YES _____ NO _____

SIGNATURE OF PAYROLL CHECKER

DATE

*Minimum of two per month.

**PROJECT SITE LABOR & EEO STANDARDS INTERVIEW
DOTD OJT TRAINEE INTERVIEW**

STATE PROJECT NUMBER: _____

DATE: _____

PARISH _____

CONTRACTOR: _____

PRIME: ___ SUB: ___

EMPLOYEE'S NAME: _____

S.S. NUMBER: _____ (last four digits of s.s.)

LABOR COMPLIANCE:

1. What is your job classification? _____
2. What is your hourly rate of pay? _____
3. Have you seen the wage rates posted on the job site? YES ___ NO ___
4. Do you ever work more than 40 hours a week? YES ___ NO ___
5. Do you receive time and a half for overtime? YES ___ NO ___

EQUAL EMPLOYMENT OPPORTUNITY:

1. Have you seen the posters on EEO? YES ___ NO ___
2. Do you know who the Company EEO Officer is? YES ___ NO ___
3. Were you given a written copy of the Company's EEO Policy? YES ___ NO ___
4. Do you have meetings to explain the Company's EEO Policy? YES ___ NO ___

ON-THE-JOB TRAINING

What is your training classification? _____

Do you understand the training YES ___ NO ___

When did you begin working for this company (approx. month/year) _____

What other previous job classification/crafts have you held with this company or other companies:

What is the name and title of your trainer? _____

Please explain the training you are receiving?

SIGNATURE OF INTERVIEWER: _____

For use of payroll checkers: Is the above information in agreement with payroll data and contract requirements? YES ___ NO ___

SIGNATURE OF PAYROLL CHECKER

DATE








The trainees will be interviewed each month

Labor Compliance Documents/Posters for Project Sites

If you are required to post the notice to employees working on federal or federally financed construction projects, it must be posted in a "prominent and accessible place."



Employee Rights

Effective June 21, 2010, federal contractors and subcontractors must notify employees of their rights. This notice must be displayed conspicuously in and around plants and/or offices, and where other employee notices are posted.

-  Employee Polygraph Protection Act bw
-  Employee Rights on Federal Projects
-  Employee Rights on Government Contracts
-  FHWA 1022
-  Genetic Discrimination ltr bw
-  Minimum Wage
-  USERRA Uniformed Services Employment and Reemployment Rights Act


Equal Opportunity Posters for Federal Projects

The law requires an employer to post notices describing the Federal laws prohibiting job discrimination based on race, sex, age, national origin, and disability, and equal pay, disability and genetic information.

-  Equal Employment Opportunity (English)
-  Equal Employment Opportunity (Spanish)


Family and Medical Leave Act (FMLA)

Outlining employee rights under the Family and Medical Leave Act (FMLA) for those employers that and applicants can clearly see it. If your workforce's primary language is not English, the DOL also requires a Spanish version. Failure to post will result in a \$100 fine for each offense.



-  Family and Medical Leave Act (FMLA)

OSHA

The U.S. Occupational Safety and Health Administration (OSHA) requires all private employers to have a poster of the OSH Act.

-  OSHA Job Safety and Health 3165low-res

Workers' Compensation

-  Workers Compensation Form
-  Workers Compensation Fraud poster