

BOARD OF COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT

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 Orleans Levee District (OLD) 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 OLD Compliance Department, 6920 Franklin Avenue, Ste 106, New Orleans, LA 70122.

B. POLICY: It is the policy of the OLD 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 OLD 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, 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 OLD 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 OLD, 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 OLD deems appropriate. The contractor shall 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 OLD 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 OLD 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 OLD) 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 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 DBE: The OLD 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 DBE 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 OLD DBE Program, and the following criteria.

(1) Credit will only be given for use of DBEs that are certified by LAUCP. Certification of DBE by other agencies is not recognized.

(2) The contractor will receive additional credit toward its DBE goal for subcontracts awarded to new or underutilized DBE firms. An additional 25% of the total amount of the DBE subcontract will be credited towards the contract goal. DBE firms considered to be underutilized are those certified firms which have not received more than one subcontract during the federal fiscal year or exceeded \$250,000. Underutilized firms will be identified in the list of certified DBE included as part of the solicitation of bids.

(3) 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 DBE that perform a commercially useful function.

The contractor shall operate in a manner consistent with the guidelines set forth in the OLD 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 OLD 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 OLD shall evaluate the work subcontracted in accordance with the OLD DBE Program, industry practices and other relevant factors. When an arrangement between the contractor and the DBE represents standard industry practice, if such arrangement erodes the ownership, control or independence of the DBE, or fails to meet the commercially useful function requirement, the contractor will not receive credit toward the goal.

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

(5) A contractor may count toward the DBE goal 100 percent of verified delivery fees paid to a DBE trucker. The DBE trucker must manage and supervise the trucking operations with its own employees and use 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 OLD certified DBE supplier. No credit will be counted unless the DBE trucker is an approved subcontractor.

(6) A contractor may count toward the DBE goal that portion of the dollar value with a joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture. Such crediting is subject to a favorable OLD review of the joint venture agreement to be furnished by the apparent low bidder before award of the contract. The joint venture agreement shall 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.

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

- a. The DBE supplier assumes actual and contractual responsibility for the provision of materials and supplies.
- b. The contractor may count 100 percent of expenditures made to a DBE manufacturer provided the DBE manufacturer operates or maintains a factory or establishment 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 shall be certified as such by OLD.
- d. A DBE may not assign or lease portions of its supply, manufactured product, or service agreement without the written approval of the OLD.

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

(9) The contractor will not receive credit if the contractor makes direct payment to the material supplier. However, it will 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.

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

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 DBE as potential subcontractors. Bidders shall contact DBE 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) Form CS-6AAA and "Attachment to Form CS-6AAA" and, if necessary, documentation of good faith efforts shall be submitted within 10 business days following the opening of bids to the OLD Compliance Programs Office. Submittals shall be personally delivered and date and time stamped into the OLD Compliance Programs Office by the close of business, 10 business days after opening of bids; or mailed to the OLD Compliance Programs Office by certified mail, return receipt requested and post marked by the 10th business day after the opening of bids. A business day is defined as a normal working day of OLD.

Should a bidder protest or appeal any matter regarding the bidding or award of a contract in accordance with Subsection 102.13 of the 2000 Louisiana Standard Specifications (Subsection 102.15 of the 1992 Louisiana Standard Specifications) after the scheduled time of bid opening, the Compliance Programs Section will immediately suspend the ten day requirement for submission of the CS-6AAA and Attachments until further notice and will notify all parties involved of the suspension. Once the protest has been resolved the Compliance Programs Section will notify the low bidder and issue a date for submission of the CS-6AAA and Attachments.

Contractors using under-utilized OLD certified DBE will be eligible for an additional 25% goal credit. The bidder should check the Credit block on the CS-6AAA to receive the credit. The maximum credit amount that can be given per project is 25%.

All attachments to Form CS-6AAA shall include:

- a. The names of 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 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 DBE; and
- e. The 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 OLD.

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 OLD Compliance Programs Office within the time period allowed. If the documentation required is not provided in the time and manner specified, OLD 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 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 10 business days after opening of bids. Form CS-6AAA shall indicate the DBE 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 OLD's evaluation of good faith efforts in the pre-award stage will only focus 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 OLD 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 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 forfeiture of the proposal guarantee and the OLD rejecting the bid, pursuing award to the next lowest bidder, or re-advertising the project. The original apparent low bidder will not be allowed to bid on the project should re-advertisement occur.

The apparent low bidder shall forfeit the proposal guarantee unless the bidder can show that the reason for not meeting the requirements given in these DBE Provisions was beyond the bidder's control. The OLD Chief Engineer will review the bidder's reasons for not meeting these DBE Provisions and will decide if the reasons are sufficient to allow return of the proposal guarantee.

(7) The bidder has the right to appeal the OLD's findings and rulings to the OLD Chief Engineer. The bidder may present information to clarify the previously submitted documentation. The decision rendered by the OLD Chief Engineer will be administratively final. There shall be no appeal to the US DOT. If the OLD 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 14 calendar days after notification.

(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 shall submit Form OMF-3A, Utilization of DBE as Subcontractors, with requests to sublet prior to any 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 OLD a liaison officer who will be responsible for the administration of the contractor's DBE program.

(3) The contractor shall 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 DBE to OLD upon request.

(4) The contractor shall 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 shall provide evidence demonstrating how the goal will be met.

(6) If the contractor is unable to demonstrate to the OLD'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 OLD may withhold an amount equal to the difference between the DBE goal and the actual DBE participation achieved as damages.

(7) When the OLD 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 OLD will conduct an investigation of such activities with the cooperation of the parties involved. If the OLD finds that any person or entity is not in compliance, the OLD 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 OLD, 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 OLD 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 OLD deems appropriate. The contractor has the right to appeal the OLD's finding and rulings to the OLD 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 OLD Chief Engineer will be administratively final.

(8) To ensure that the obligations under subcontracts awarded to subcontractors are met, the OLD 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 DBE, their respective subcontract amount within 14 calendar days after the contractor receives payment from OLD 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 be held by the contractor pending completion of a subcontractor's work in accordance with the terms of the subcontract, but must be released by the contractor within 30 calendar days after satisfactory completion of the subcontractor's work and payment for the completed work by the OLD. Acceptance of the subcontracted work by the Project Engineer shall constitute satisfactory completion of subcontracted work. Delay or postponement of payment to the subcontractor may be imposed by the contractor 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 OLD 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 OLD deems appropriate. All subcontracting agreements made by the contractor shall include the current payment to subcontractors 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 DBE Oversight Committee. Members of the DBE Oversight Committee are: the Chief, Construction Division; the OLD Compliance Programs Director; and a FAA Division Representative.

(9) The contractor shall meet the requirements of Subsection 108.01 Subletting of Contract, and shall submit OLD Forms OMF-1A, Request to Sublet, OMF-2A, Subcontractor's EEO Certification, and OMF-3A, Utilization of DBE as Subcontractors. These forms shall be approved by OLD before any subcontract work is performed.

(10) OLD reserve 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 OLD 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 OLD 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, OLD 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 shall 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 OLD approved substitute. Substitutions of named DBE shall be approved in writing by the OLD 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 shall be submitted to OLD 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 OLD 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 shall immediately notify the OLD 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 shall 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 shall be submitted to the OLD for approval using Form OMF-1A, Request to Sublet, 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 DBE for the purpose of meeting the goal. The OLD 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 OLD 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 OLD to ascertain the efforts made. The contractor shall demonstrate good faith efforts to maximize participation by DBE prior to award and during the life of the contract. Good faith efforts include personal contacts, follow-ups and earnest negotiations with DBE. OLD 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 DBE 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. Selection 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 DBE 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 DBE that their interest in the contract is being solicited, with sufficient time to allow the DBE to participate effectively. The contractor shall seek DBE in the same geographic area from which it generally seeks subcontractors for a given project. If the contractor cannot meet the goal using DBE 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 DBE for specific items of work include:

- a. The names, addresses and telephone numbers of DBE 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 DBE 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 DBE 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 shall be submitted. Rejecting a DBE'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 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 OLD.
- h. Assisting DBE in obtaining bonding, insurance, or lines of credit required by the contractor.
- i. Evidence of DBE contacted but rejected as unqualified, accompanied by reason for rejection based on a thorough investigation of the DBEs capabilities.
- j. Any additional information not included above which would aid the OLD 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 OLD to determine compliance with the DBE contract obligations. These records shall include the names of subcontractors, including DBE; 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 DBE. When requested, the contractor shall submit all subcontracts and other financial transactions executed with DBE in such form, manner and content as prescribed by OLD. The OLD 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 shall submit monthly reports on DBE involvement. At the conclusion of each estimate period the contractor shall submit the Form CP-1A, CONTRACTORS MONTHLY DBE PARTICIPATION, to the project engineer to verify actual payments to DBE 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.

Upon completion of all DBE participation, the contractor shall submit the Form CP-2A, DBE FINAL REPORT, to the OLD Compliance Programs Section with a copy to the project engineer detailing all DBE subcontract payments. When the actual amount paid to DBE 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 which affect DBE goal attainment, including retainage, shall be paid by the contractor before the OLD releases the payment/performance/retainage bond.

The OLD 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 OLD DBE Program. If the DBE bidder sublets any portion of the contract, the DBE bidder shall 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.

Prime contractors then report the name(s), addresses and amounts being paid for each subcontractor being utilized. On a monthly basis, the Engineering Department sends us a monthly expenditure report showing the various projects being paid. Also included in this report are the subcontracted DBEs that are being utilized, along with their payments for their services on the DBE A-1 form provided by our Department. From this information, our office compiles a monthly report showing the monetary DBE percentage participation. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Section 26.13 Federal Financial Assistance Agreement Assurance

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

Assurance: 26.13(a)

“OLD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of and DOT assisted contract or in the administration of its DBE Program or the requirements of 49CFR Part 26. The recipient shall take all necessary and reasonable steps under 49CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient’s DBE Program, as required by 49CFR Part 16 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the OLD of its failure to carry out its approved program, the agency may impose sanctions as provided for under Part 26. It may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)”

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

Contract Assurance: 26.13(b)

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

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

Note: This language is to be used verbatim, as it is stated in **Section 26.13(a)(b)**.

**FORM CS-6AAA
BIDDERS ASSURANCE OF DBE PARTICIPATION**

S.P.#	Contract Amount: \$
F.A.P.#	DBE Goal Percentage
Letting Date:	DBE Goal Dollar Value: \$

By its signature affixed hereto, the contractor assures the OLD that one of the following situations exists (check only one box):

- The project goal will be met or exceeded.
- A portion of the project goal can be met, as indicated below. Good faith effort documentation is attached. DBE Goal Participation Amount _____ Percent \$ _____

The contractor certifies that each firm listed is currently on the DBE list as maintained by OLD and is certified for the items of work shown on the attachment(s). The contractor having assured that the goal for DBE participation prescribed in the special provisions will be met or exceeded, or that the portion of the DBE goal will be met or exceeded, attests that negotiations are in progress or complete and that a subcontract(s) will be executed with the firm(s) listed below within 60 calendar days after award of contract.

NAME OF DBE/WBE FIRM(S)	JOINT CHECKS	25% CREDIT¹ \$	INTENDED SUBCONTRACT PRICE² \$

¹Contractors using under-utilized OLD certified DBEs will be eligible for an additional 25% goal credit. The OLD Compliance Department will calculate this bonus whenever it applies.

²For supplier list only the value of the subcontract that can be credited toward the DBE goal. This amount shall be equal to the amount shown for the supplier on the Attachment to Form CS-6AAA. Details are listed on the attachment(s) to Form CS-6AAA. The contractor assessed the capability and availability of named firm(s) and sees no impediment to prevent award of subcontract(s) as described on the attachments.

The contractor may guarantee the DBE payments for materials and supplies through the issuance of checks made out jointly to the DBE and supplier. Please mark the "Joint Checks" column for those subcontractors whose materials and supplies will be handled in this manner.

The contractor shall evaluate the subcontract work or services actually performed by the DBE to ensure that a commercially useful function is being served in accordance with the Required Contract Provisions for DBE Participation in Federal Aid Construction Contracts. The contractor understands that no credit toward the DBE goal will be allowed for DBE that do not perform a commercially useful function. The contractor has a current copy of the OLD DBE Program Implementation Guide which details the methods of operation that are acceptable on projects containing DBE goals. Copies of this guide may be obtained by calling the OLD Compliance Department (504) 286-3100, ext. 1008.

NAME OF CONTRACTOR	
AUTHORIZED SIGNATURE	
TYPED OR PRINTED NAME	
TITLE	
DBE LIAISON OFFICER (typed or printed name)	
PHONE NUMBER	
DATE	TAX ID#

**FORM CP-1A
ORLEANS LEVEE DISTRICT
CONTRACTOR'S MONTHLY DBE PARTICIPATION**

STATE PROJECT NO.	CONTRACTOR:
FEDERAL AID PROJECT NO.	
ESTIMATE NO.	REPORT PERIOD: _____ TO _____

OLD CERTIFIED DBE/WBE SUBCONTRACTOR OR SUPPLIER	ITEMS PERFORMED AND PAID THIS ESTIMATE PERIOD	\$ AMOUNT PAID THIS MONTH ¹	\$ TOTAL PAID TO DATE ¹

¹For suppliers, list total amount paid. Contractor will receive credit for 60 percent of these expenditures.

This report covers the previous estimate period and shall be submitted to the Project Engineer with the current month's pay estimate. Questions should be directed to the OLD Compliance Department at (504) 286-3100, ext. 1008.

The Contractor certifies that the above amounts were paid to the listed DBE/WBEs and that documentation of these payments is available for inspection.

Project Engineer has reviewed this form. _____ (Signature of Project Engineer).

Authorized Signature
Typed or Printed Name
Title
Phone No.
Date

**FORM CP-2A
ORLEANS LEVEE DISTRICT
DBE/WBE FINAL REPORT**

STATE PROJECT NO.	DBE GOAL AMOUNT: \$	CONTRACTOR:
FEDERAL PROJECT NO.	CONTRACT AMOUNT: \$	
PARISH(ES)	LETTING DATE:	

OLD CERTIFIED DBE/WBE SUBCONTRACTOR OR SUPPLIER	ITEMS PERFORMED AND PAID	TOTAL DOLLAR AMOUNT PAID TO SUB OR SUPPLIER

This is to certify that \$ _____ has been paid to Disadvantaged Business Enterprise Subcontractors/Suppliers listed above.

Authorized Signature	
Typed or Printed Name	
Title	
Date	

Parish or County _____ State of _____

Subscribed and sworn to, before me, this _____ day of _____, A.D. 20_____

Notary Public _____

My commission expires: _____