

LAUCP CERTIFICATION PLAN AND PROCESS

I. OVERVIEW

In February 1999, the U. S. Department of Transportation (DOT) issued new Disadvantaged Business Enterprise (DBE) regulations, Title 49 of the Code of Federal Regulations, (CFR) Part 26, to provide uniform requirements from the DOT.

A major component in the new regulation is for all recipients who receive DOT funding to develop a Unified Certification Program (UCP) for certifying small socially and economically disadvantaged businesses. To the extent an inconsistency may exist between this Plan and Process and 49 CFR 23 and 26, as amended; 49 CFR 23 and 26, as amended, shall control. The process must be defined and submitted to the Secretary of Transportation by March 4, 2002.

II. RECIPIENTS

This program affects agencies that are DOT recipients who receive federal funding of at least \$250,000.00 in grants or contracting opportunities. The following list of recipients has been identified, contacted and afforded the opportunity to participate in the planning, development and implementation of Louisiana's Unified Certification Program.

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

Terrebonne Parish Consolidated Gov.
Town of Many (Hart)

Vicksburg/Tallulah District Airport Bd.
West Carroll Kelly Airport Authority

Union Parish Airport

III. IMPACT

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

IV. PURPOSE OF CERTIFICATION

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

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

VII. CERTIFICATION STANDARDS

A. This section is a summary of the major requirements for certification listed in 49 CFR 26, Subpart D. The eligibility standards include business size, social and economic disadvantage, ownership, and control. In order to determine a firm's eligibility, the issues of operations, financial, independence and the firm's nature of business will be considered. For a complete reference to the eligibility standards, refer to 49 CFR 26.61 through 26.73.

B. Business Size

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The Certifying Agency must apply current SBA business size standard(s) found in 13 CFR 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
2. Even if it meets the requirements of paragraph 1 of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's

previous three fiscal years, in excess of \$19.54 million in accordance with 49 CFR 26.65(b), as amended. The Secretary adjusts this amount for inflation from time to time.

C. Socially and Economically Disadvantaged Individuals

1. The Certifying Agency shall rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, or other minorities found to be disadvantaged by the Small Business Administration are socially and economically disadvantaged individuals. Definitions of these groups can be found in 49 CFR 26.5.

2. Social Disadvantage

If there is a reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged in accordance with 49 CFR 26.63, the Certifying Agency must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

3. Economic Disadvantage

Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. If the statement of personal net worth shows that the individual's personal net worth exceeds \$750,000.00, the individual's presumption of economic disadvantaged is rebutted.

D. Individual Determinations of Social and Economic Disadvantage

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. The Certifying Agency may make a case by case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged in accordance with 49 CFR 26.67.

E. Ownership

1. To establish ownership, the Certifying Agency will look beyond what is reflected in the ownership documents and consider all the facts in the record as a whole. The disadvantaged owner(s) must own 51 percent or more of the firm, and the contribution to acquire ownership must have been real and substantial. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firms as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
2. Business Structures
 - a. Sole Proprietorship – the disadvantaged individual must own at least 51% or more of the firm.
 - b. Corporation - the disadvantaged individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - c. Partnership - the disadvantaged individual must own 51 percent of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement.
 - d. Limited Liability Corporation - at least 51 percent of each class of member interest must be owned by the disadvantaged individual.
 - e. Limited Liability Partnership – the disadvantaged partner must own at least 51 percent of each class of partnership interest. Such ownership must be reflected in the firm's partnership agreement.
 - f. Joint Venture – an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise for which the parties combine their property, capital, efforts, skills and knowledge and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management risks, and profits of the joint venture are commensurate with its ownership interest.

IX. TRUCKERS

To be DBE certified, trucking firms must own at least one fully operational truck.

The owner is not required to drive the truck and may hire drivers. The truck must have a current registration and be properly licensed. The owner of the trucking firm must also meet all other eligibility requirements.

X. CONCESSIONAIRES

A. Process and Net Worth

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

B. Size Standards

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

C. Franchise and License Agreement

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

D. Ineligible Arrangements

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

XI. DENIALS OF CERTIFICATION

- A. When a Certifying Agency determines a business to be ineligible for certification, the Certifying Agency will notify the firm, in writing. The

letter shall provide an explanation or basis for the denial, specifically referencing the applicable regulations and the evidence in the record that supports each reason for the denial.

- B. All certification denials are administratively final and conclusive at the state level. The applicant firm may appeal the decision, in writing, within 90 days of the date of LAUCP's decision to the U.S. Department of Transportation. The appeals shall be addressed to the U.S. Department of Transportation, Office of Civil Rights, Certification Appeals Branch, 400 7th St. S. W., Room 5414, Washington, D.C. 20590. The Certifying Agency will promptly implement any DOT certification appeal decisions affecting the eligibility of the applicant, if DOT determines that the denial of the firm was without merit.
- C. A firm that is denied certification cannot reapply for certification to any Certifying Agency for a period of twelve months after a final decision has been rendered.

XII. DECERTIFICATION

A. Third Party Challenges

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

A. Failure to Submit Recertifications and No Change Affidavits

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

C. Agency Review

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

D. Informal Hearings

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

1. The DBE firm shall be offered an opportunity to present evidence in support of continued eligibility for DBE certification at an informal hearing.
2. The hearing shall be conducted before the Executive Committee of the LAUCP. Representatives of the Certifying Agency which investigated the challenge and/or made the decision to propose decertification shall not participate in making a decision to remove the firm from eligibility.
3. There must be a written record of the proceedings. *The Executive Committee will issue a written decision. The decision will be provided to the firm and the certifying agency.*

E. Personal Net Worth

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

F. Appeal Rights

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

U.S. Department of Transportation
Office of Civil Rights
Certification Appeals Branch
450 7th Street, S.W.
Room 5414
Washington, D.C. 20590

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

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

G. Re-Application

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

XIII. RECERTIFICATION

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

XIV. NO CHANGE AFFIDAVITS (ANNUAL UPDATES)

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

XV. CONFIDENTIALITY

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