

City of Monroe  
Monroe Transit System

Disadvantaged  
Business Enterprise (DBE) Program

August 2013

## CITY OF MONROE TRANSIT SYSTEM DBE PROGRAM

### Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR §26.5.

### Objectives /Policy Statement (§§26.1, 26.23)

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

It is the policy of the City of Monroe Transit System to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Marc Keenan has been designated as the DBE Liaison Officer. In that capacity, Marc Keenan is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Monroe Transit System in its financial assistance agreements with the Department of Transportation.

City of Monroe Transit System has disseminated this policy statement to the Monroe City Council and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through direct mail and through procurement solicitations.

  
\_\_\_\_\_  
James E. Mayo, Mayor  
City of Monroe

Date: 8-12-13

**Nondiscrimination.** (§26.7)

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

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

**DBE Program Updates** (§26.21)

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

**Quotas** (§26.43)

We do not use quotas in any way in the administration of this DBE program.

**DBE Liaison Officer (DBELO)** (§26.45)

We have designated the following individual as our DBE Liaison Officer: Marc Keenan, 700 Washington Street, Monroe, LA 71201, (318) 329-3230, e-mail [marc.keenan@ci.monroe.la.us](mailto:marc.keenan@ci.monroe.la.us). In that capacity, Marc Keenan is responsible for implementing all aspects of the DBE program and ensuring that the City of Monroe Transit System complies with all provisions of 49 CFR Part 26. Marc Keenan has direct, independent access to James E. Mayo; Mayor of the City of Monroe, concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City of Monroe Transit System's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

11. Participates in DBE training seminars.
12. Refers potential DBEs to the Louisiana DOT certification office and acts as liaison to the Uniform Certification Process in Louisiana.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

**Fostering Small Business Participation (§26.39)**

The City of Monroe Transit System will make a reasonable number of prime contracts available for and procure materials/supplies from certified small businesses. Due to the location and medium size of Monroe, Louisiana, small businesses in the Monroe and Shreveport Metropolitan Statistical areas will be the primary focus of this plan.

The United States Small Business Association's (SBA) definition of a small business will be used to determine who is a qualified small business. A qualifying small business must be certified as a small business and will be race and gender neutral. Certification will be verified by referencing the small business's inclusion in the Small Business Association (SBA) and/or Central Contractor Registration (CCR) website databases.

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

In order to meet our goal and the requirements of 49 CFR 26.5, we will develop a standard operating procurement procedure that includes consideration of small businesses. We will train staff responsible for procurement in the procurement procedure and show them how to look up small businesses in the SBA and CCR databases. Staff will be required to contact qualifying small businesses first when procuring small operating items such as uniforms, tires, office supplies, services, etc. A list of small businesses that are contacted for procuring operating items will be kept to ensure staff is making a good faith effort in meeting the Small Business Participation goal and be in compliance with the procedure.

In addition to procurement of standard operating materials and supplies, we will include provisions for proposals in our procurement procedure. These provisions will address the use of qualified small businesses in projects that go out for bid. When setting up a Request for Proposal (RFP), certified small businesses will be sought out for prime contracts by using the SBA and CCR website databases in the same way they will be used for procurement of small operating items. The person(s) responsible for the RFP at Monroe Transit System will contact qualified small businesses to make them aware of available prime contract opportunities so the qualified small businesses have an opportunity to submit proposals. This person will also keep a list of small businesses that are contacted to ensure a good faith effort is made in using small businesses, including DBEs, and compliance with the procedure.

When using non-small business prime contractors, we will require prime contractors provide subcontracting opportunities that are of a size small business, including DBEs, can perform. Any large contracted projects that span multiple years will require bidders to specify parts of the project that can be subcontracted to qualified small businesses or to list specific subcontracts that are of a size that qualified small businesses, including DBEs, can reasonably perform. We will provide information to prime contracts on how to locate available small businesses for use as subcontractors

and require all prime contractors to track and report to us all small businesses contacted for use as subcontractors.

The City of Monroe will endeavor to make outreach efforts to promote our program. The following list outlines examples of our outreach initiatives:

- Write a letter to certified DBEs in our service area to inform them of purchase or contract opportunities;
- Document telephone calls, emails, and correspondence made on behalf of DBEs;
- Advertise on local television community cable networks;
- Request purchase/contract price quotes/bids from DBEs;
- Look through newspapers for new businesses to determine DBE eligibility;

All elements of the Small Business Participation plan will be fully operational within six (6) months of plan approval. The procedure will be written and communicated to staff through training of all employees involved in procurement.

#### **Federal Financial Assistance Agreement Assurance (§26.13)**

City of Monroe Transit System has signed the following assurance; applicable to all DOT- assisted contracts and their administration:

City of Monroe Transit System shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of Monroe Transit System of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

#### **DBE Financial Institutions (§26.27)**

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

We have searched the State of Louisiana's Unified Certification Program Website to identify such institutions and, to date, have identified no such institutions in the State of Louisiana.

## **Directory (§26.25)**

The City of Monroe Transit System utilizes the State of Louisiana Uniform Certification Program directory to identify all firms eligible to participate as DBEs. The directory lists the firm's name, address, and phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Louisiana Uniform Certification Program directory is revised and updated as soon as changes are made.

## **Overconcentration (§26.33)**

We have not identified that overconcentration exists in the types of work that DBEs perform.

## **Required Contract Clauses (§§26.13, 26.29)**

### Contract Assurance

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.

### Prompt Payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the City of Monroe Transit System. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City of Monroe Transit System. This clause applies to both DBE and non-DBE subcontractors.

## **Monitoring and Enforcement Mechanisms (§26.37)**

We will require contractors to provide written documentation of efforts to obtain DBE subcontractors as well as prompt payment documentation to sub-contractors.

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (*e.g.*, referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109.

We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

The following regulations, provisions, and contract remedies are included in our procurement documents and are available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

Failure by the contractor or sub-contractor to carry out these requirements is a material breach of the (contract or agreement), which may result in the termination of this (contract or agreement) or such other remedy as Monroe Transit System deems appropriate.

### **Provisions for Resolution of Disputes or Breaches**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the General Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the General Manager shall be final and conclusive unless within 30 days from the date of receipt of such copy, the contractor mails or otherwise furnished to FTA a written appeal. The decision of FTA's duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessary to imply bad faith, or not supported by substantial evidence.

In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the General Manager's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

### **Overall Goals (§26.45)**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment B to this program. This section of the program will be updated as required by federal regulations.

### **Transit Vehicle Manufacturers (§26.49)**

City of Monroe Transit System will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Monroe Transit System may, at its discretion and with FTA approval, establish project-specific goals for DBE

participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### Process

City of Monroe Transit System submits its overall goal to DOT on August first preceding the next three-year cycle beginning on October first.

Before establishing the overall goal, the City of Monroe Transit System will consult with the State of Louisiana's Unified Certification Program and any other interested parties to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Monroe Transit System's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that MTS and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be published in our local newspapers; The News Star, Monroe Free Press, and The Monroe Dispatch. We will attempt to issue this notice by June 15 of the required year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We will begin using our overall goal on October 1, unless we have received other instructions from DOT.

### Breakout of Estimated Race-Neutral and Race-Conscious Participation

This section of the program will be updated when the goal calculation is updated.

### **Contract Goals (§26.51)**

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

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Good Faith Efforts (§26.53)**

### Information to be submitted

City of Monroe Transit System treats bidder/offeror's compliance with good faith effort requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information at any time before we commit ourselves to performance of the contract:

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

### Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The City of Monroe's Purchasing Division is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts.

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

### Administrative Reconsideration (§26.53(d)(2))

Within 14 calendar days of being informed by City of Monroe Transit System that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Marc Keenan, 700 Washington Street, Monroe, LA 71201, Phone (318) 884-9092, e-mail marc.keenan@ci.monroe.la.us. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our

reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts when a DBE is replaced on a contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Prime contractors may not terminate for convenience. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Contractors may not terminate and perform the work with its own forces without the City of Monroe Transit System's prior written consent.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

#### **Counting DBE Participation (§26.55)**

We will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

#### **Certification (§§26.61 - 26.91)**

Certification standards and guidelines will be established by the State of Louisiana Department of Transportation & Development.

#### Process

Information about the certification process, application forms and documentation requirements can be obtained from:

DOTD Compliance Programs  
1201 Capitol Access Rd.  
Baton Rouge, LA 70802  
Phone: 225-379-1382  
Fax: 225-379-1865  
Web: <http://www.dotd.la.gov/administration/compliance/certification.aspx>

#### Unified Certification Program

The Louisiana Department of Transportation & Development has completed its Unified Certification Program encompassing the requirements of §26.73.

## Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7<sup>th</sup> Street SW, Room 2104  
Washington, DC 20590

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

## Recertifications

The State of Louisiana DOTD will review the eligibility of DBEs that were certified under former Part 23 to make sure that they meet the standards of Subpart D of Part 26.

## “No Change” Affidavits and Notices of Change

The State of Louisiana DOTD requires all DBEs to inform them, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the initial application for certification.

All owners of the DBE firm shall follow all guidelines required by the State of Louisiana DOTD for ongoing compliance.

## **Information Collection and Reporting**

### Bidders List

The City of Monroe Transit System will create a bidder list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

- We will either insert a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts or;
- We include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to us.

### Monitoring Payments to DBEs

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

We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

### Reporting to DOT

We will report DBE participation to DOT as follows:

We will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

### Confidentiality

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

