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DBE Participation Oversight and Monitoring Policy

Disadvantaged Business Enterprise (DBE) Program

The Luzerne County Transportation Authority (“LCTA”) is committed to ensuring equal opportunity for all vendors interested in our projects. We strongly encourage participation by Disadvantaged Business Enterprises (DBEs) for all LCTA contracting opportunities.

The LCTA 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 LCTA receives federal financial assistance from the DOT, and as a condition of receiving this assistance, the LCTA signed an assurance that it will comply with 49 CFR Part 26. The LCTA’s DBE Program, as approved by the Federal Transit Administration (FTA) on July 10, 2013. This policy shall apply to all DBE participation contracts for professional services, construction projects, leases, sub-contracts, and durable goods.

Disadvantaged Business Enterprise (DBE) Program Oversight

The LCTA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the LCTA’s DBE program.

Monitoring Payments to DBEs and Non-DBEs the LCTA’s DBE program provides the appropriate means to enforce the requirements of this section. LCTA shall include appropriate penalties for failure to comply, the terms and conditions of which are established in both the DBE program and contracts. LCTA’s DBE program shall also provide that any delay or postponement of payment among the parties may take place only for good cause, with the LCTA’s prior written approval.

The LCTA shall monitor every contract on which DBE participation is claimed, including race-conscious DBE participation in response to a contract goal and race-neutral DBE participation towards a recipient’s overall goal (49 CFR § 26.37(b)).

Communication is made between the LCTA and the DBE firms to assure payments have been made in a timely manner. Any delay in payments being made by the prime contractor to the subcontractor can result in the LCTA withholding payments to the prime contractor or paying the subcontractor directly and deducting that amount from the total amount owed the prime contractor. The LCTA, may, under extenuating circumstances, exclude the prime contractor from future procurement projects funded by federal funds.

The LCTA 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, sections 103, 107 and 109. The LCTA will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

DBE Program Contract Monitoring Procedures

The LCTA demonstrates that it is sufficiently monitoring every contract on which DBE participation is claimed by implementing the following measures: (1) developing a monitoring process to ensure that program participants are complying with 49 CFR part 26; (2) confirming that the monitoring process ensures that the work committed to a DBE is performed by the DBE to which the work was committed; and (3) confirming that the monitoring process includes a written certification that the recipient has reviewed contracting records and monitored work sites for this purpose.

The LCTA undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered DBE participation contract. Such monitoring activities will be accomplished through the following method(s):

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
- (3) LCTA has established prompt payment contract clauses and reporting requirements to monitor and enforce that prompt payment and return of retainage is in fact occurring. LCTA will apply all legal and contract remedies available to it under federal, state and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.
- (4) Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the 30-day clock for payment.
- (5) Use of an automated system that requires real time entry of payments to, and receipts by prime contractors and subcontractors and regularly monitoring that system.
- (6) The LCTA shall perform written certification in the form of: documents, dates, invoices, purchase orders, change orders, project progress, payment information (prime/Sub) and signatures as a confirmation of DBE contract monitoring efforts. This written certification, whether in hard copy or electronic format, shall be made available to the FTA/DOT upon request. Furthermore, the purpose of the written certification is for the LCTA to acknowledge that it has performed the required oversight and stands by its results. Therefore, all monitoring shall be documented, dated, and signed by the DBELO, who performed the review. Certifications and document reviews shall take place every 30 days from the start of each contract.

(7) Post-award monitoring shall take place via a review of the documentation of performance by prime contractor, reporting, and prompt payment to sub-contractors. A signed and completed post-award review report shall be required to close the project.

Commercially Useful Function (CUF) Review (49 CFR §26.55(c))

The LCTA may only count expenditures to a DBE contractor toward DBE goals if the DBE is performing a commercially useful function (CUF) on that contract. Consequently, for every contract on which DBE participation is claimed, the LCTA shall determine if all DBEs are performing a CUF to accurately credit DBE services. A signed and documented CUF review between the LCTA and the DBE contractor shall be completed in order to meet the monitoring requirement.

In addition to a CUF review, the trained LCTA field staff member or designee shall, as part of their other on-site monitoring duties, (1) review the DBE's subcontract to identify scope of work; (2) take steps to observe the DBE on the job site to ensure that it is the same DBE that was committed to perform the subcontracted work and it is using its own resources to perform the scope of work; (3) record the observations in a log book or other document; and (4) include a signature or email identification to meet the "written certification" requirement. If conducted as part of other on-site monitoring duties, the LCTA field staff member or designee shall list all observation notes and monitoring documentation in a specific section in the DBE project log book dedicated to DBE on-site monitoring.

Documentation and Retention

The LCTA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the LCTA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the LCTA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

This reporting requirement also extends to any certified DBE subcontractor. The LCTA shall perform interim audits of contract payments to DBE's. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractor equals or the dollar amounts stated in the schedule of DBE participation.

The LCTA proactively reviews contract payments to subcontractors including DBEs on a monthly (30-day) basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the LCTA by the prime contractor.

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