

Lafayette Regional Airport Disadvantaged Business Enterprise (DBE) Policy and Procedure Manual

DBE Project Goals

DBE project goals will be established for Airport projects that are supported by federal grants. These project goals will be included in the public notice of solicitation as well as the bid documents and all subsequent contract documents.

Contractor Requirement

The contractor/prime bidder MUST either:

1. Meet the DBE goal as advertised with meaningful DBE participation through subcontracts, joint ventures, or suppliers; OR
2. Demonstrate Good Faith Efforts to meet the DBE goal through outreach to DBE firms, advertisement of opportunities, or efforts to mentor DBE firms.

All firms participating in the project, including DBE participation, MUST be documented on the Contract Participation and DBE Commitment Form (DBE Form 1). This form must include all information requested and be signed by an authorized signatory. In order to receive credit for DBE participation, the firm must be DBE certified by the Louisiana Unified Certification Program (LAUCP) prior to the bid deadline. The DBE forms are required by the apparent low bidder or selected contractor no later than 3 business days after the bid or proposal deadline. The DBE firms proposed on this form are binding. Any substitutions or removals of DBE firms listed on this form after submission must be requested through the formal process of contract amendment and be approved by the DBELO (see Substitution and Removal).

Contractor Tip

Because the Contractor Participation Form requires bidders to submit the contract dollar amount for all participating subcontractors, it is advised that contractors secure DBE participation and quotes prior to the bid deadline.

For each participating DBE firm, a DBE Participation Questionnaire Form (DBE Form 2) MUST be included and signed by an authorized signatory of the DBE firm. The purpose of this form is to confirm that the DBE firm has committed to participating in the project and that both parties agree to the scope of work and price as designated on the Schedule A.

Counting DBE Participation

DBE firms must be certified with the LAUCP prior to the bid/proposal deadline. Lafayette Airport Commission (LAC) will only count the value of the work actually performed by the DBE toward the DBE goal. Work performed by a DBE must provide a commercially useful function.

When a DBE subcontracts part of the work from its own contract to a non-DBE firm, the value of subcontracted work shall not count toward the DBE goal. Supplies purchased in the execution of a construction contract is counted toward the DBE goal; however, if the DBE is participating solely as a supplier to the contract, the value of purchased materials only counts at 60% of the total value of materials supplied. For additional guidance see 49 CFR Part 26.55.

Good Faith Efforts

In the event that the DBE goal is not met, the bidder must submit a completed Documentation of Good Faith Efforts (DBE Form 3) form in addition to all other supplemental documentation received by the apparent low bidder or selected contractor within three days after bids or proposals are received. In order to demonstrate Good Faith Efforts, Bidders **MUST** complete the DBE Form 3 and provide supporting documentation of all efforts taken to secure DBE project participation.

Good Faith Efforts Requirements

Evidence of Good Faith Efforts MUST include documentation of the following activities:

1. Portions of the work were identified to be performed by DBEs in order to facilitate the participation of DBE firms.
2. DBE firms were solicited through all reasonable and available means which must include:
 - a. Attendance and networking with DBE firms at pre-bid/pre-proposal conferences and match-making events;
 - b. Advertising through public notices, emails, faxes, calls to eligible DBEs listed in the LAUCP directory (www.LAUCP.org); and
 - c. Documented initial and follow-up contact with DBEs listed in the LAUCP directory. **A list of e-mails sent to DBE firms is not sufficient documentation of Good faith Efforts.**
3. DBEs were provided adequate information about the plans, specifications, and requirements of the contract in a timely manner as demonstrated through documentation of initial contact, information sent to DBEs, response times and follow-up contact.

Contractor Tip

. Demonstration of Good faith Efforts on LAC projects must include evidence that the bidder/offeror has conducted the following activities:

- Identified portions of work to be performed by DBEs
- Notified certified DBE firms of the project through all reasonable means.
- Conducted initial and follow-up contact with DBEs
- Negotiated with DBEs in good faith and did not reject DBEs without sound and verifiable reasons.
- Notified DBEs if bid are rejected and stated the reason why.
- If DBE bids were rejected for cost reasonableness provide copies of all bids for review by the DBELO.

4. DBEs were not rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities. Documentation of all responses received from DBEs and the reason for the rejection of a DBE must be provided.
5. Negotiations with DBE firms were conducted in good faith as evidenced by documentation of all bids received and justification of instances when a non-DBE is selected over a DBE.
6. DBEs were notified if their bids were rejected and the reason the bids were rejected as evidenced by copies of correspondence to interested DBE firms.

The fact that there may be additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal as long as such costs are reasonable.

The rejection of a DBE because its quotation for the work was not the lowest received is not considered sufficient good faith effort. As such, bidders/offerors must provide documentation of all bids received from both DBEs and non-DBEs and demonstrate that a DBEs bid was rejected for cost reasonableness.

The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

Additional Good Faith Effort Strategies

In addition to the activities that MUST be conducted and documented, bidders/offerors may conduct the following activities as evidence of good faith:

1. Efforts to assist DBEs in obtaining bonding, lines of credit, or insurance as required by the LAC or contractor.
2. Efforts to assist DBEs in obtaining equipment, supplies, materials, or related assistance or services.
3. Effectively utilizing the services provided by minority/women contractor groups and community organizations, local, state, and federal business assistance centers, and other small business assistance organizations.

A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

The Disadvantaged Business Enterprise Liaison Officer (DBELO) is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. (See DBE Form 4 – Good Faith Efforts Evaluation.) The LAC shall not award a contract to a bidder or offeror that has not met the DBE goal or demonstrated Good Faith Efforts to achieve the goal as detailed in the part.

The LAC shall ensure that all information is complete and accurate and adequately documents the bidder/offeror's intent before the LAC commits to the performance of the contract by the bidder/offeror.

In the solicitation of Department of Transportation / Federal Aviation Administration (DOT/FAA) Assisted contracts for which a contract goal has been established, the following shall be required:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the LAC, no later than 3 days after bid opening or as specified in the bid documents:
 - (i) The names and addresses of DBE firms that will participate in the contract.
 - (ii) A description of the work each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - (iii) The dollar amount of the participation of each DBE firm participating.
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
 - (v) Written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
3. If the contract goal is not met, evidence of good faith efforts must be provided. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder/offeror when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative Reconsideration

If a bidder or offeror fails to meet the requirements of the DBE Program, the bidder shall receive official notification of the non-responsive determination and subsequent rejection of the bid or proposal. Prior to award of the contract, the bidder/offeror may elect to submit additional information for administrative reconsideration. Written documentation or argument concerning the bidder/offeror's efforts to meet the goal or make adequate good faith efforts shall be submitted within 5 business days of the notification of bid rejection and will be reviewed by the Reconsideration Official who did not take part in the original determination of non-responsiveness. The Reconsideration Official is currently identified as:

Mr. Steven L. Picou, A.A.E., A.C.E.
Executive Director
Lafayette Airport Commission
222 Jet Ranger X Drive
Lafayette, LA 70508
337-266-4401
StevenP@lftairport.com

Upon request, the bidder/offeror shall be afforded the opportunity to meet in person with the reconsideration official prior to the final reconsideration determination.

The final written decision on reconsideration shall be sent to the bidder/offeror, in writing prior to contract award. The written decision shall fully explain the basis for the finding. The result of

the reconsideration process is final and is not administratively appealable to the Department of Transportation.

Bidders List

LAC will maintain a Bidders List of DBE and non-DBE contractors and subcontractors who seek to work on LFT federally funded contracts. The data collected will assist in establishing future DBE goals that are based on reliable and accurate market data of ready, willing, and able firms in the Lafayette Market Area.

Data collected will include: firm name, address, DBE or non-DBE status, age of firm, annual gross receipts. The data will be collected from the two apparent lowest bidders (via DBE Participation Questionnaire (DBE Form 2) and will also be solicited at pre-bid/proposal conferences via voluntary survey.

Monitoring and Enforcement

The LAC has implemented a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs to which the work was committed. The program elements described below include the processes in place to ensure compliance with the DBE program. This mechanism includes a written monthly report confirming work performed by the DBE subcontractors and work paid to the DBE subcontractor. In addition, it includes the process of monitoring work sites and confirmation of DBE participation in committed scopes of work.

Award of DBE Subcontracts

The Contractor or Consultant shall, no later than three (3) days from the award of a contract, execute formal contracts or purchase orders with the DBE(s) included on the Contract Participation and DBE Commitment Form (DBE Form 1).

The DBELO will review all Prime and DBE subcontracts prior to Notice to Proceed to ensure that contracts include all required contract language and that the contract does not erode the ownership, control, or independence of the DBE firm. The DBELO will also confirm that the scope of work to be performed by the DBE meets the know experience and capability of the DBE firm.

A random audit of DBE subcontractor purchase orders may be requested to confirm that the DBE firm is conducting business on their own behalf and is not reliant on the Prime firm for purchases, equipment, supplies, and materials.

Monthly Reports

Prime contractor shall submit a Monthly DBE Report (DBE Form 9) that shall accurately represent the amount paid and value of work completed to DBE Subcontractor or Subconsultants during that invoice period. This form must be submitted with every monthly invoice regardless of the amount of payment or lack of payment to DBE firms. This form shall be signed by the Prime Contractor or Consultant and signed by the DBE Subcontractor(s) or Subconsultant(s) and submitted to the Program Manager.

DBE participation will not officially be counted toward the Prime Contractor's or Consultant's commitment until payment has been rendered to the DBE. Failure to submit the required reports may result in the withholding of payment or partial payments to the Contractor or Consultant until the reports are submitted.

The DBELO shall have administrative approval on the routing process of each invoice to confirm submission of the DBE monthly report form. Monthly invoices with the DBE monthly report will be reviewed by the DBELO prior to authorization for payment.

Site Monitoring

The DBE Construction Site Monitoring process involves proactive monitoring of construction projects in compliance with the requirements of 49 CFR Part 26 and in response to the US Department of Transportation (USDOT) policies around DBE contractor fraud as detailed by the Office of the Inspector General.

It is the policy of the Lafayette Airport Commission (LAC) to ensure compliance with the provisions of 49 CFR Part 26 through monitoring and enforcement mechanisms for all federally funded projects. The LAC will ensure compliance with the regulations through document review, site monitoring, analysis of DBE goal attainment and Commercially Useful Function audits in compliance with 49 CFR Parts 37, 53 and 55 as detailed below.

Contractor Tip

The DBE Monthly Report Form serves as an additional monitoring tool to track the progress of payments to DBE firms. The DBELO will use this form to ensure that DBE participation is on track to meet the DBE commitment of the contract. DBE monthly reports that show no or low DBE participation at major project milestones will be asked to submit a DBE utilization schedule to explain when DBE subcontractors will begin their work.

DOTD Red Flags

1. DBE firm has assigns work to another firm
2. DBE firm is utilizing equipment that belongs to Prime firm
3. DBE prime performs little or no work
4. Employees work for both the Prime and the DBE
5. Materials and supplies necessary for the DBE firm's performance are delivered to, billed to, or paid by Prime firm

Contract Review

Among the first steps in the process is the review of the contract between the LAC and the Prime Contractor, as well as review of the contract agreements for all subcontractors (both DBE and non-DBE) on federally funded construction projects. The contracts are reviewed for compliance with the following requirements of the federal regulations:

- general assurance language regarding non-discrimination 49 CFR 26.13 (b);
- compliance with prompt payment requirements 49 CFR 26.29 (a);
- removal and substitution and good faith efforts 49 CFR 26.53 (f)(1) – (3); and
- good faith efforts in removal and substitution 49 CFR 26.53 (g).

Additionally, the contract review looks for the inclusion of language which is prohibited by the federal regulations such as termination for convenience.

Failure to include the required language in all contracts and subcontracts (or inclusion of prohibited language) is considered a finding of non-compliance. Moreover, these language requirements must be specifically stated in all contracts and as such, language around flow down provisions from the contract between the LAC and the Prime do not represent compliance with federal language requirements. (See DBE Form 8 – Contract Compliance Review Checklist.)

Weekly Site Monitoring

For major construction projects the LAC uses a DBE Site Monitor to conduct regular site reviews of all DBE firms on the project to ensure that the DBE is performing a commercially useful function. The site reviews will be conducted weekly or more frequently if warranted. Site reviews will provide a snapshot of the DBEs on a construction site and will identify any Red Flags as defined by the USDOT Office of the Inspector General. The Site Monitor observes and records the activities of all DBEs on the site; interviews workers and supervisors; documents any activities or allegations defined as Red Flags by the USDOT Office of the Inspector General and investigates Red Flags; and identifies and documents non-compliance issues as warranted. (See DBE Form 5 – Site Review.)

The Site Monitor also attends weekly program and construction management meetings as a component of the regular compliance review mechanism for identifying potential compliance issues that may require investigation and follow-up. The Site Monitor is available to assist the program managers and is responsible for reporting violations of DBE compliance requirements and/or fraud (by either the DBE firm or the Prime Contractor) to the DBELO. The Site Monitor is also available to assist DBEs with compliance issues arising from the actions of Prime Contractors as a mechanism for preventing problems or complaints.

Commercially Useful Function Audits

All DBE firms on the project will participate in at least one Commercially Useful Function (CUF) audit to be conducted after the DBE firm has been on the project site for at least one invoice period. The CUF Audit includes recorded site observations and review of supporting documentation to include certified payroll, invoices, purchase orders, haul tickets, etc. to ensure that the DBE firm is in compliance with the self-performance requirements of the federal regulations. (See DBE Form 6 – Commercially Useful Function Audit.)

Moreover, in the event that the Preliminary Compliance Review, site monitoring or a complaint against the DBE firms reveals an OIG Red Flag, a specific Commercially Useful Function Compliance Audit process may be developed to address the specific findings, deficiency or complaint.

Prompt Payment

The prime contractor shall pay each subcontractor under this contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from the Lafayette Airport. Accordingly, all subcontractors are required to comply with prompt payment provisions and to pay lower tier subcontractors within fifteen (15) days of receipt of payment from the Prime or higher tier subcontractor.

The prime contractor shall return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed and accepted by the Lafayette Airport and all lien delays under applicable law have expired. All subcontractors are required to comply with prompt payment of retainage provisions.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the DBE Office. This clause applies to both DBE and non-DBE subcontractors. Retainage payments may be held for non-compliance by the prime contractor with the prompt payment regulation.

In the event of the Contractor's or Consultant's noncompliance with these prompt payment provisions, LFT shall impose such sanctions and penalties as it or FAA may determine to be appropriate, including, but not limited to, the following:

1. Withholding of payments to the Contractor or Consultant under the contract until it complies, and/or
2. Deduction from a contract funds due or to become due the Contractor or Consultant, and/or
3. Disqualification of the Contractor or Consultant as non-responsible, and/or
4. Cancellation, termination or suspension of the contract in whole or in part, and/or
5. Any other remedy as LFT or FAA deems appropriate.

Substitution and Removal of DBE Contractors

In compliance with the Code of Federal regulations 49 CFR 26.53(f)(1)(i):

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed in the Contractor Participation Form (DBE Form and DBE Commitment (DBE Form 1) Unless the contractor obtains the written consent of the DBELO as provided in this paragraph; and unless consent of the DBELO is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

A contractor cannot terminate a DBE firm without prior written consent of the DBELO. DBE firms cannot be terminated for convenience.

Contractors must submit written a request to the Project Manager prior to removing or substituting DBE contractors that were included on the bidder's Contractor Participation Form at the time of contract award. Requests for substitution and removal must be submitted on the DBE Form 7 – Request for Removal & Substitution and shall be reviewed by the DBELO with consultation as necessary from the Prime contractor, the DBE contractor, and the Project Manager.

The DBELO will only approve the removal and/or substitution of a DBE firm for good cause as detailed in 49 CFR 26.53(f)(3) and summarized below:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. LFT staff determines that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides written notice to the Project Manager of its withdrawal;

Contractor Tip

Contractors should aim to resolve any internal disputes with DBE subcontractors on their own. Substitution and removal of DBE contractors should be viewed as a last resort. To avoid disputes, maintain continuous communication of the project's progress and any changes to schedule, scope, or quantity to ensure that the DBE firm is prepared to complete their portion of the work. All subcontractors should be notified of potential change orders that may impact their scope or schedule prior to negotiation and approval of such change orders to ensure adherence to schedule and price.

8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

After review, the DBELO will submit an approval or rejection of the request in writing to the Prime contractor and the Project Manager. If the DBELO approves the termination of the DBE firm, the Prime Contractor shall make Good Faith Efforts to replace the DBE firm with another qualified, certified DBE firm.

Substitutions/removal of a DBE firm in response to an Airport directed change order causing the reduction of scope intended to be provided by the DBE firm must also follow the same procedures and shall be brought to the attention of the DBELO prior to approval of the change order. DBE firms cannot be terminated for convenience and any such clause in the subcontract shall be rendered void.

A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

DBE Compliance Audits and Program Updates

The DBELO shall perform an annual compliance audit of the DBE program at the end of each Federal Fiscal Year cycle. This audit will review the forms, processes, procedures and implementation to review compliance and efficiency. As part of the audit, LFT staff, program managers, and contractors may be surveyed or consulted for future program improvements to enhance efficiency of operations and adherence to compliance.

Program updates will be recommended based on implementation enhancements, new DBE guidance, or changes to the regulations. These changes will be implemented within 3-6 months of recommendation depending on the urgency and complexity of the change.

Contractor Tip

LFT encourages contractors to assist in our efforts of continuous improvement by submitting issues and concerns to the LFT DBELO or Procurement office. These comments will be reviewed regularly and assessed on an annual basis for inclusion in the revised policy and procedure manual.

Fostering Small Business Participation

The LAC has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The Small Business Program is open to all business owners regardless of race, ethnicity or gender. To be an eligible Small Business Enterprise (SBE) a business must have a least 51% ownership by a person who is economically disadvantaged. To be considered economically disadvantaged the individual's Personal Net Worth, not including their primary place of residence or ownership in the business cannot exceed \$1.32 million in compliance with the 49 CFR Part 26.67. The business must also must meet the size standards of the Small Business Administration and all requirements of economic disadvantage a defined in 49 CFR 26.67. A certified SBE business owner must be a U.S. Citizen or lawfully permanent resident of the U.S.

All certified DBE firms are presumed to be eligible to participate as SBEs on LAC projects.

Small Businesses that are not currently DBE certified and/or or not eligible for certification as a DBE can get SBE certified through LADOTD.

The LAC's small business element will be implemented on federally funded projects as a race-neutral measure as well as local and state funded projects. We will actively implement the program elements to foster small business participation; doing so as a requirement of good faith implementation of the DBE Program.

Information, Confidentiality, Cooperation and Intimidation or Retaliation

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The LAC, contractor, or any other participant in the program shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

DBE Grievance Procedure

Overview

A grievance is a written or electronic statement of complaint concerning allegations of discrimination or allegations of violation(s) of 49 CFR Parts 23 or 26. Anonymous or unsigned correspondence, verbal allegations or inquiries seeking advice or information are not considered a grievance.

Contractor Tip

All written complaints alleging violation of the DBE Program or violation of assurances around non-discrimination MUST be investigated by the LAC.

A grievance may be filed by any DBE firm that is: 1) actively participating on a LAC project; 2) bidding on a LAC project; 3) submitted for inclusion on a project via letter of intent by a Prime bidder; 4) has participated on a LAC project within the past 180 days; or 5) has been subject to discrimination or retaliation prohibited by any civil rights authority with 180 days of the complaint.

Correspondence or verbal communications that is not a complaint or grievance, but potentially involves a Civil Rights issue or violation of 49 CFR Parts 23 and 26 may be investigated by the DBE Office, especially if the DBELO believes an issue may eventually rise to a complaint.

Additionally, any indications of disparate treatment or disparate impact must be investigated by the DBE Office as required by the non-discrimination assurances of 49 CFR Part 26.13. These investigations are conducted as compliance reviews.

Accepting the Grievance

Once the correspondence is deemed a grievance the DBELO shall acknowledge acceptance of the grievance via a written or electronic (e-mail) statement.

If the grievance is submitted on behalf of a complainant by an attorney, the DBE Office must contact the attorney and must request permission to contact the complainant directly.

Upon deciding to proceed with an investigation, the DBE Office shall also notify all parties involved in the grievance that are alleged to have violated the DBE requirements or non-discrimination provisions.

The notification will also be submitted via a written or electronic statement, and will include a cautionary statement that the parties to the grievance shall not intimidate, threaten, coerce or discriminate against the complainant or any party that testifies, assists or participates in the investigation in any manner.

The notification will also advise that no request for removal and substitution of the DBE complainant can be initiated by any party to the grievance until the grievance is resolved. If

appropriate, the notice will also encourage the parties to continue good faith negotiations. Finally, the notification will advise the parties to the grievance that contact with Commissioners of the LAC is prohibited during the grievance process.

Investigating the Grievance

The DBELO will review the grievance for complete information in order to proceed with processing, investigation and resolution. For a grievance to be complete it must include the following information:

- A written explanation of what happened;
- Complete and correct contact information for the complainant;
- Sufficient information to understand the facts that led to the grievance.

The DBE Office may contact the parties to the grievance by telephone, e-mail or in person to obtain additional or missing information. Here again, if the complainant or any party to the grievance is represented by an attorney, the DBE Office must contact the attorney for additional information and/or must request permission to contact the parties directly.

In identifying the basis of the grievance investigation the DBE Office shall look for one or more of the following:

- Failure to comply with the requirements of 49 CFR Parts 23 and/or 26;
- Different standards, requirements or eligibility factors for participation by the DBE firm(s);
- Disparate treatment in any manner of the DBE participant; or
- Use of any policy, procedure or practice that has the effect of disproportionately excluding or adversely affecting DBE firms.

Once the basis of the grievance investigation is determined the DBE Office will initiate the investigation. The grievance investigation may involve:

- interviews with the parties to the grievance;
- interviews with third parties involved with the issue, incident or event;
- collection and review of supporting documentation;
- review of applicable regulations; and/or
- other methods of data collection and analysis as warranted.

All parties to the grievance, including the complainant, must comply with all requests for information from the DBE Office. Failure to comply with requests for information on the part of the complainant may result in dismissal of the grievance. Failure to comply with a request for information by any party alleged to be in violation of the DBE program requirements represents a material breach of the contract with the LAC and may result in termination of the contract or other such remedy a deemed appropriate by the LAC.

Timeframe for Response

The DBE Office has 45 business days to conduct and complete the investigation and prepare an investigative report, except in cases of a disparate impact investigation.

Investigative Report

The Investigative Report will be prepared within 45 business days of acknowledgement of the grievance and will be formatted as follows:

- *Introduction* – This section must provide an historical overview of the grievance prior to the involvement of the DBE Office.
- *Claims* – This section shall succinctly state the allegations of the complainant.
- *Basis of the Grievance* -- This section should describe the basis of the grievance as detailed above in the section titled Investigating the Grievance.
- *Methodology* – The report shall state how the investigation was conducted, what documents were reviewed, who was interviewed, etc. The methodology should detail both quantitative and qualitative information as warranted.
- *Findings and Analysis* – All facts relevant to the investigation will be provided in this section. Analysis of factual issues in dispute should be presented with resolution based on examination of relevant documentation and reliable information. Where appropriate, specific evidence supporting a finding will be cited.
- *Decision and Recommended Action* – This section should include a statement indicating the findings of the investigation and any recommended remedy to resolve the grievance.

A Letter of Findings and/or Resolution shall be sent to the parties, along with a copy of the Investigative Report.

Dismissing Complaints

The DBELO may decline to proceed with a grievance for one or more of the following reasons:

- The grievance is not supported by the regulations, is lacking in detail, without merit and as a whole cannot be considered to be grounded in fact.
- The complainant fails to respond to repeated requests for additional information needed to process the grievance.
- Litigation has been filed by the complainant with the same basis and issues involved in the complaint. In such cases, the grievance should not be held in abeyance, but dismissed.
- The complainant withdraws the grievance.
- The complainant does not accept a reasonable resolution of the grievance, where reasonableness is determined by the DBE Office.

Administrative Reconsideration/DBE Grievance Appeals Panel

Once an investigation is complete and a final decision is rendered by the DBE Office, the parties to the grievance are entitled to reconsideration through a formal appeals process. A request for reconsideration must be issued in writing or electronically within five business days of receipt of the Letter of Findings and/or Resolution.

In the event of a request for reconsideration the LAC shall refer the grievance to a DBE Grievance Panel to review the investigation process and outcomes and render a decision of findings and recommendations. The Panel shall consist of a minimum of three members

including the LAC General Counsel and must include minimally two members that have knowledge and understanding of 49 CFR Parts 23 and 26 and Title VI of the Civil Rights Act. The Panel members shall be selected from DBE Liaison Officers (DBELOs) from other US Department of Transportation (USDOT) funded agencies in Louisiana (i.e., Baton Rouge Airport, LADOTD, etc.).

No participant in the original investigation, including the DBELO, can serve as a member of the Panel.

Reasons for reconsidering a decision are limited to the following circumstances:

- The original investigation is deemed insufficient relative to the basis of the investigation.
- Allegations made by the complainant were not investigated.
- Facts or documentation were not adequately considered.
- Issues were investigated under the wrong regulatory guidance, or in the absence of any regulatory guidance.
- Material information becomes available that was not available previously.
- Fraud or misrepresentation occurred at any level of the investigation.

The Panel must convene within 30 days of receipt of a request for reconsideration and has a total of 60 working days after convening to render a final decision. The Panel will receive written and verbal presentations from the DBE Office and may request and consider written and verbal reports and guidance from other relevant experts.

Notably, in the absence of abuse of discretion, the DBE Grievance Panel shall give administrative deference to the report and recommendations of the DBE Office. Additionally, the Airport's General Counsel may intervene at any point in the administrative reconsideration process.