

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
(DBE) POLICY**

**CHAPTER I.**

**A. POLICY STATEMENT**

1. The Lakeland Area Mass Transit District, d.b.a. the Citrus Connection, as a recipient of Federal Transit funds authorized by Titles I, III, V and VI (or SAFETEA-LU), Pub. L. 102-240 or by Federal transit laws in title 49, U.S. Code, or Titles I, III and V of the TEA-21 Pub. L. 105-178 shall have and implement a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 C.F.R. Part 26. As such Citrus Connection shall never exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Citrus Connection's DBE Program on the basis of race, color, sex or national origin.
2. In administering Citrus Connection's DBE Program, the Citrus Connection must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishments of the objectives of the Program with respect to individuals of a particular race, color, sex or national origin.

The Citrus Connection provides information regarding its contractual needs, organization, procurement procedures and general solicitation requirements to businesspersons (including DBEs) interested in performing work on Citrus Connection contracts. Citrus Connection's Contracts and Procurement Department, in coordination with the Citrus Connection DBE Officer, has developed an information card on "How To Do Business With Citrus Connection". Citrus Connection is committed to ensuring small firms an equitable opportunity by undertaking every reasonable effort to attain the goals set forth in this program.

3. Citrus Connection's Disadvantaged Business Enterprise Program (DBE) applies to all federally funded contracts in excess of \$250,000 subject to the requirements of 49 C.F.R Part 26.
4. Citrus Connection's DBE Program will not be used to discriminate against any company or groups of companies. However, Citrus Connection accepts the premise that special efforts must be made to include Disadvantaged Business Enterprises in Citrus Connection's contract and procurement activities. Citrus Connection is

committed to ensuring small firms an equitable opportunity by undertaking every reasonable effort to attain the goals set forth in this program.

## **B. OBJECTIVES**

1. Citrus Connection will take affirmative steps to ensure Disadvantaged Business Enterprises have the maximum opportunity to participate in procurement and contracting opportunities financed in whole or in part with funds which are local or derived from Department of Transportation.
2. In connection with the performance of this program, Citrus Connection will use its best effort to ensure that Disadvantaged Business Enterprises are afforded an opportunity to compete for contracts and subcontract work let by or are for the benefit of Citrus Connection.
3. **The objectives of this program are:**
  - (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the department transit financial assistance programs;
  - (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
  - (c) To ensure that Citrus Connection's DBE Program is narrowly tailored in accordance with applicable law;
  - (d) To ensure only firms that fully meet the eligibility standards as set forth in 49 C.F. R. Part 26 are permitted to participate as DBEs;
  - (e) 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 marketplace outside the DBE Program.

## **CHAPTER II.**

### **DEFINITIONS AND INTERPRETATIONS**

In addition to those definitions contained in 49 C.F.R. Part 26 Subsection 26.5, which are hereby incorporated into this Program by reference, the following definitions apply to Citrus Connection's Program:

"Affirmative Action" – means positive activities undertaken to eliminate discrimination and effects of past discrimination and to ensure nondiscriminatory practices in the future.

"Applicant" – means one who submits an application, request, or plan to be approved by a department official or by a primary recipient as a condition to eligibility for Department of Transportation financial assistance; and "application" means such an application, request, or plan.

"Certification" - the process by which an applicant is determined to be a bona fide Disadvantaged Business Enterprise and eligible for participation in Citrus Connection's Disadvantaged Business Enterprise Program.

"Challenge" – means a formal filing by a third party to rebut the presumption that a particular individual is socially and economically disadvantaged.

"Compliance" – means the condition existing when a recipient or contractor has met and implemented the requirement of this part.

"Commercially Useful Function" – means work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e. the firm's role is not a superfluous step added in an attempt to obtain credit toward goals. If, in the recipient's judgement, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

"Contract" – means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

"Contracting Opportunity" – means any decision by a recipient or contractor to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).

"Contractor" - any person or Business entity that shall enter into a contract with Citrus Connection, including all partners and joint ventures of such person or Business entity.

“Disadvantaged Business Enterprise (DBE) – an existing Business for which the gross revenues or number of employees averaged over the past three years, inclusive of affiliates as defined by 13 C.F.R.121.103, does not exceed the size standards as defined pursuant to Section 3 of the Small Business Act and for which the personal net worth of each owner (excluding primary residence and interest in Business) does not exceed \$750,000 and does not exceed \$17,420,000. average annual receipts over the firms previous three fiscal years and meet all criteria established in 49 C.F.R. Part 26 Sub Part D Certification Standards.

“DBE Officer” – is the designated staff person to have overall responsibility for promotion of the Disadvantaged Business Enterprise program.

“Goal” - a numerically expressed objective which Citrus Connection or its contractors are encouraged to make a Good Faith effort to achieve.

“Good Faith Efforts” - documented steps that describe attempts to include Disadvantaged Business Enterprises in procurement and contracting opportunities.

“Non-compliance”- means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

“Program” - the Disadvantaged Business Enterprise Program of the Citrus Connection.

“Race-neutral” – measure or program is one that is or can be, used to assist all small business. “Race-neutral” includes gender-neutrality.

## **CHAPTER III.**

### **RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION**

- A.** To insure proper implementation of Citrus Connection's DBE Program, Citrus Connection shall circulate the Program throughout its organization and to the DBE and non-DBE business communities that perform work on Citrus Connection's DOT-assisted contracts.
- B.** The DBE Officer shall be responsible for implementing all aspects of Citrus Connection's DBE Program. The liaison officer shall have adequate staff to administer the Program in compliance with 49 C.F.R. Part 26 section 26.25.
- C.** Citrus Connection's Transit Director, Danny Ours, shall be, for the DBE Program purposes, the Reconsideration Official.
- D.** Citrus Connection has established the role of a DBE Officer. The following individual has been appointed as LAMTD's DBE Officer:

Adam Goldman  
1212 George Jenkins Boulevard  
Lakeland, Florida 33815  
Phone – (863) 688-7433 (ext. 144)  
Fax- (863) 683-4132  
E-mail – AGoldman@ridecitrus.com

The following are the sixteen duties and responsibilities as required by the DBE Officer:

1. DBE Liaison has direct, independent access to the Transit Director concerning DBE Program.
2. Gathers and reports statistical data and other information required by FTA
3. Reviews Third Party contracts and purchase requisitions for compliance.
4. Works to set overall annual goals.
5. Ensures bid notices and RFPs are available to DBEs in a timely manner
6. Identifies contracts and procurements for race neutral and contract specific goals and monitors results.
7. Analyze progress toward goal attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises Transit Director and Board on DBE matters and achievement.
10. Chairs ad hoc DBE Advisory Committee, if necessary.
11. Participates with applicable project manager and Transit Director to determine contractor compliance.
12. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.

13. Plans and participates in DBE training.
14. Certifies DBEs according to Unified Certification Program criteria maintained by the Florida Department of Transportation.
15. Provides outreach to DBEs and community organizations to advise them of opportunities.
16. Maintains an updated directory of certified DBEs.

# CHAPTER IV

## ADMINISTRATIVE REQUIREMENTS

- A.** Financial Institutions – Citrus Connection shall thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the region and make reasonable efforts to use these institutions. Citrus Connection shall also encourage prime contractors to use such institutions, such as:

Banco Popular  
450 E. Altamonte Drive  
Altamonte Springs, FL 32701  
(407) 370-7694

Peoples Bank  
3275 NW 79<sup>TH</sup> ST.  
Miami, FL 33147  
(305) 696-0700

Federal Deposit Insurance  
1201 W. Peachtree St. NE  
Suite 1800  
Atlanta, GA 30309  
(404) 817-1300

Metro Savings  
715 S. Goldwind Ave.  
Orlando, FL 32805  
(407) 293-7320

Hamilton Bank N.A.  
3750 N.W. 87<sup>th</sup> Ave.  
Miami, FL 33178  
(305) 717-5536

Black Business  
Investment Board  
1711 S. Gadsden St.  
Tallahassee, FL 32301  
(850) 487-4850

Florida A & M University  
Federal Credit Union  
1550 Melvin St.  
Tallahassee, FL 32301  
(850) 222-4545

Leon County Women  
& Minority Business  
Enterprise Program  
Leon County Courthouse  
Suite 502  
Tallahassee, FL 32301  
(850) 488-9962

Florida Bankers Ass.  
1001 Thomasville Rd.  
Tallahassee, FL 32303  
(850) 224-2265

- B.** DBE Directory – Citrus Connection has created a Disadvantaged Business Enterprise Directory that lists Disadvantaged Business Enterprises categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business and details concerning the company's business specialty(ies). The directory will be updated at least annually and maintained on the computer and on hard copy. In compiling this directory, Citrus Connection will maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in Citrus Connection's program.

Citrus Connection will revise its directory at an annual basis and make updated information available to contractors and public on request.

- C.** Over-concentration – If Citrus Connection determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, Citrus Connection will devise appropriate

measures to address this overconcentration. Appropriate measures to address this overconcentration may include the use of incentive, technical assistance, business development program, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has determined that non-DBEs are unduly burdened.

Citrus Connection may also consider varying its use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

## **CHAPTER V.**

### **DETERMINING, MEETING AND COUNTING OVERALL ANNUAL DBE PROGRAM GOALS**

#### **A. Methodology:**

As a recipient of U.S.DOT financial assistance, through the Federal Transit Administration (FTA) Citrus Connection is required to set an overall goal for DBE participation in U.S. DOT assisted contract. The overall goal will provide for participation by all certified DBEs and will not be subdivided into group specific goals, or established as a quota system.

Citrus Connection's overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs available to participate on U.S. DOT assisted contracts. Citrus Connection intends to meet those goals to the maximum extent feasible through the race neutral measures described in the 49 CFR Part 26 section 26.45 (5)

#### **1. Establishing Base Figure – Data:**

- a. Using data available through Citrus Connection's database, Citrus Connection will determine the number of ready, willing and able minority firms in the area available to perform work
- b. Citrus Connection will compare the above data to determine it's base figure (A)
- c. Divide the number DBEs by the number of all firms in Citrus Connection's DBE Directory to arrive at base percentage A for the relative availability of DBEs. (A=10%)

#### **2. Adjustment to Base Figure Data:**

- a. Citrus Connection determined the number of DBEs that have bid or quoted on U.S. DOT assisted prime or subcontracts in the previous year. Also, Citrus Connection determined the number of all businesses that have bid or quoted on prime or subcontracts in the same time period.
- b. Divide the number of DBE bidders and quotes (149) by the number of all businesses (3044) to arrive at a base percentage B for the relative availability of DBEs in this market area. (Percentage = 5%)
- c. Determine the average percentage of availability by adding base percentage A (10%) and B (5%) = 15%, then divide by 2 which equals 7.5%.

Historically, by averaging the previous three years DBE participation, Citrus Connection's overall goal is 13%. Furthermore, because Citrus Connection has exceeded its goal in the past, Citrus Connection's Race Neutral goal is 4% and 15% for the Race Conscious goal.

<u>Fiscal Year</u>	<u>Goals</u>	<u>Actuals</u>
2002	13%	13%
2003	13%	8%
2004	13%	6%
2005	13%	*
2006	13%	*
2007	13%	*

\* Actuals for 2005-07 are available upon request.

Citrus Connection will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT assisted contracts for the fiscal year may be higher or lower than the base figure indicates.

**3. Public Participation – Goals:**

- a. Citrus Connection will consult with minority, women, general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of DBE and non-DBE businesses, and the effects of discrimination on opportunities for DBEs.
- b. Citrus Connection has and will publish a notice announcing proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Citrus Connection for 30 days following the date of the notice. Additionally, the notice will inform the public that Citrus Connection will accept comments on the goals for 45 days from the date of the notice. The notice will include addresses, to which comments may be sent, and the notice will be published in both general circulation media and available minority focused media and trade association publications.

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Que Pasa Magazine - April 3, 2000 (April/May issue)

Central Florida Hispanic Magazine – May 1, 2000 (May/June issue)

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At the time of the issuance of this policy statement, no comments have been received.

Public announcement will take place on May 9, 2000 with the National Minority Supplier Development Council Chapter Meeting. At that time, an opportunity will be available for public participation and until then all names of organizations will be completed.

c. Transit Vehicle Manufacturers Certification

A transit vehicle manufacturer or dealer must provide certification of manufacturer compliance for those vehicles the distributor or dealer seeks to offer. Transit vehicle manufacturers are required to submit separate annual percentage overall goals for the utilization of DBEs to the FTA Administrator. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying 49 CFR Part 26 Section 26.49.

d. Race Neutral Measures

Citrus Connection shall meet the maximum feasible portion of the annual goal through the use of race-neutral means of facilitating DBE participation. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation.

Citrus Connection has determined its Race Neutral Goal by the contracts that were awarded in the previous year to DBEs through customary competitive procurement procedures and subcontract on a prime contract that does not carry a goal. This is represented by the following calculation:

$$\text{Prime/subcontracts to DBE (12) } \div \text{Prime/subcontracts to all firms (3044)} = 1\%$$

1. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses to obtain bonding and financing);
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
4. Implement a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

5. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
6. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
7. Ensuring distribution of Citrus Connection's directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
8. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

**E. Contract Goals:** Contract goals shall only be used by Citrus Connection in the event the race neutral method of achieving the annual goal falls short.

For all contracts for which contract goals have been established, Citrus Connection shall in the solicitation inform competitors that the competitors will be required to submit Disadvantaged Business Enterprise participation information to Citrus Connection and that the award of the contract will be conditioned upon satisfaction of the requirements established by Citrus Connection. The apparent successful competitor shall submit, at the time of the bid opening or proposal review, the following information:

1. The name and address of Disadvantaged Business Enterprise firms that will participate in the contract;
2. The description of the work each named Disadvantaged Business Enterprise will perform; and
3. The dollar amount of participation by each named Disadvantaged Business Enterprise firm.

**F. Good Faith Efforts:** If the Disadvantaged Business Enterprise participation submitted by the competitor does not meet the Disadvantaged Business Enterprise contract goals, the competitor must submit evidence demonstrating the Good Faith Efforts were made to meet the goals.

To determine sufficient Good Faith Efforts to meet the Disadvantaged Business Enterprise contract goal, a bidder/proposer shall document the steps it has taken to obtain Disadvantaged Business Enterprise participation, including but not limited to the following:

1. Attendance at a pre-bid meeting, if any, scheduled by Citrus Connection to inform Disadvantaged Business Enterprises of subcontracting opportunities under a given solicitation;
2. Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due;
3. Written notification to Disadvantaged Business Enterprises that their interest in the contract is solicited;
4. Efforts made to select portions of the work proposed to be performed by Disadvantaged Business Enterprises in order to increase the likelihood of achieving the goal;
5. Efforts to negotiate with Disadvantaged Business Enterprises for specific sub-bids, including at a minimum:
  - (a) The names, addresses and telephone numbers of Disadvantaged Business Enterprises that were contacted;
  - (b) A description of the information provided to Disadvantaged Business Enterprises regarding the plans and specifications for portions of the work to be performed; and
  - (c) A statement of why additional agreements with disadvantaged Business Enterprises were not reached.
6. Efforts made to assist the Disadvantaged Business Enterprises contacted that needed assistance in obtaining bonding or insurance required by the competitor or Citrus Connection.

To determine whether a competitor that has failed to meet the Disadvantaged Business Enterprise goals may be awarded the contract, Citrus Connection will determine whether the efforts the bidder/proposer made to obtain Disadvantaged Business Enterprise participation constituted a good faith effort. Efforts that are merely pro forma are not good faith efforts to meet the goals.

To award a contract to a bidder/proposer that has failed to meet Disadvantaged Business Enterprise contract goals, Citrus Connection will determine whether the bidder/proposer actively and aggressively made efforts to meet Citrus Connection's Disadvantaged Business Enterprise goals.

Competitors that fail to meet Disadvantaged Business Enterprise goals and fail to demonstrate good faith efforts shall not be eligible to be awarded the contract.

To ensure that all obligations under contracts awarded to Disadvantaged Business Enterprises are met, Citrus Connection shall review the contractor Disadvantaged Business Enterprise involvement efforts during the performance of the contract. Citrus Connection shall bring to the attention of any situation in which regularly scheduled progress payments are not made to Disadvantaged Business Enterprise subcontractors.

Furthermore, Citrus Connection must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing itself to the performance of the contract by the bidder/offeror.

If Citrus Connection determines that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, Citrus Connection will, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration. 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.

Termination – Citrus Connection will require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of 49 CFR Part 26 (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without Citrus Connection's prior written consent.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, Citrus Connection will require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original amount of work as the DBE that was terminated. Citrus Connection will include in each prime contract a provision for appropriate administrative remedies that it will invoke if the prime contractor fails to comply with the requirements of this section.

## **G. Counting DBE Participation**

1. Disadvantaged Business Enterprise participation is counted as follows:
  - (a) Once a firm is determined to be an eligible Disadvantaged Business Enterprise, in accordance with this policy, the total dollar value of the contract awarded to the Disadvantaged Business Enterprise is counted toward the applicable Disadvantaged Business Enterprise goals.
  - (b) Citrus Connection or a contractor may count toward its Disadvantaged Business Enterprise goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contract of the Disadvantaged Business Enterprise partner in the joint venture.
  - (c) Citrus Connection or a contractor may count toward its Disadvantaged Business Enterprise goal only expenditures to Disadvantaged Business

Enterprises that perform a commercially useful function in the work of a contract. A Disadvantaged Business Enterprise is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a Disadvantaged Business Enterprise is performing a commercially useful function, Citrus Connection or a contractor shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

- (d) Consistent with normal industry practices, a Disadvantaged Business Enterprise may enter into subcontracts. If a Disadvantaged Business Enterprise contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the Disadvantaged Business Enterprise shall be presumed not to be performing a commercially useful function. The Disadvantaged Business Enterprise may present evidence to rebut this presumption to Citrus Connection.
- (e) Citrus Connection or a contractor may count toward its Disadvantaged Business Enterprise goals 60 percent of its expenditures for materials and supplies obtained from Disadvantaged Business Enterprise regular dealers and 100 percent of such expenditures to a manufacturer, provided that the Disadvantaged Business Enterprise assumes the actual and contractual responsibility for the provision of the materials and supplies as follows:

For the purposes of this section, a manufacturer is a firm that operates or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock and regularly sold to the public in the normal course of business.

To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

- (f) Citrus Connection or a contractor may count toward its Disadvantaged Business Enterprise goals the following expenditures to Disadvantaged Business Enterprise firms that are not manufacturers or regular dealers:
  - (1) The fees or commissions charged for providing bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities,

equipment, materials or supplies required for the performance of the contract, provided that the fee or commission is determined by Citrus Connection to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- (2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by Citrus Connection to be reasonable and not excessive as compared to fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by Citrus Connection to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (4) If a contractor does not meet an established contract goal they may nevertheless be eligible for award by demonstrating that they had made a good faith effort to attain the stated contract goal. Good faith efforts are those as defined in 49 C.F.R Part 26 Appendix A - Guidance Concerning Good Faith Efforts. If there is a preliminary determination that the bidder had not made good faith efforts, LAMTD shall, before award, provide the bidder an opportunity for administrative reconsideration.
- (5) The bidder shall 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 shall have the opportunity to meet, in person, with the Reconsideration Official to discuss the issue or whether it met the goal or made adequate good faith efforts to do so. Citrus Connection shall send the bidder 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.

**H. Quotas, set-aside, and penalties:** Citrus Connection will not permit the use of quotas for DBEs on DOT-assisted contracts subject to this part. Citrus Connection will not set-aside contracts for DBEs on DOT- assisted contracts subject to this part.

Citrus Connection, cannot be penalized, or treated by the Department as being in noncompliance with this rule, because Citrus Connection's DBE participation falls short of its overall goal, unless Citrus Connection has failed to administer its program in good faith.



## CHAPTER VI.

### REQUIRED CONTRACT PROVISIONS

Each contract entered into by Citrus Connection shall contain, in addition to any other required contract clauses, the following:

**A. Assurances – Nondiscrimination Recipient and FTA, Recipient and Contractor/Subrecipient:**

Citrus Connection, 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. LAMTD shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. LAMTD'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 Citrus Connection 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.

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 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 Citrus Connection deems appropriate.

**B. Prompt Payment:** Required by 49 CFR Part 26 Section 26.29, the contractor shall pay to each subcontractor the amount (s) due within thirty (30) calendar days after receipt of payment from Citrus Connection. The Contractor shall submit with each invoice a report of DBE expenditures. The report shall show each DBE, the amount of their subcontract, the amount earned to date, the amount earned for that respective invoice and the amount remaining to be earned. The report shall also have each DBE subcontractor to certify relative to the amounts earned and paid to date. Also in this section, Citrus Connection is required to mandate and enforce prompt payment of subcontractor, including the payment of "retainage" from the prime contractor to the subcontractor, as soon as subcontractor's work has been satisfactorily completed (i.e, all tasks called for in the subcontract have been accomplished and documented as required by Citrus Connection. This prompt payment provision is intended to apply to subcontractors at all tiers.

The prime contractor must pay the retainage it has held to subcontractor at the end of work completed. The prime contractor cannot wait until the contract has been completed and Citrus Connection has paid its retainage to make this payment to the subcontractor. This is a race-neutral feature that applies to all subcontractors, not just DBEs.

A 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.

**C. Legal and contract remedies:** Each contract will contain appropriate provisions for legal and contract remedies. Specifically, Citrus Connection may terminate a contract, in whole or in part, at any time before contract completion, whenever it determines that the contractor has failed to comply with the conditions of the contract relative to the DBE requirements. Citrus Connection will promptly notify the contractor in writing of its intent to terminate and the reasons thereof and the effective date. Further, payments made to the contractor or recoveries by Citrus Connection will be in accordance with terms of the contract and the legal rights and liabilities of both parties as defined in the contract.

**D. Contractor reporting requirements:** When a DBE participates in a contract, Citrus Connection will count only the value of the work actually performed by the DBE toward DBE goals. Citrus Connection will count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of 49 CFR Part 26 that is performed by the DBE's own forces. Citrus Connection will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

Citrus Connection will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided Citrus Connection determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

In a joint venture, Citrus Connection will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

# CHAPTER VII.

## CERTIFICATION STANDARDS

Citrus Connection will make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

- A. **Burdens of Proof:** The firm seeking certification has the burden of demonstrating to Citrus Connection, by a preponderance of the evidence, that it meets the requirements of (Subpart D) concerning group membership or individuals disadvantage, business size, ownership, and control.
- B. **Group Membership Determinations:** If Citrus Connection has a reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, Citrus Connection will require the individual to demonstrate that he/she is a member of the group. If Citrus Connection determines the individual is not a member, the individual must demonstrate social and economic disadvantage on an individual basis.

Citrus Connection's decisions concerns with membership are subject to the certification appeals procedure of Section 26.89.

- C. **Social and Economic Disadvantage:** Presumption of disadvantage, Citrus Connection must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- D. **Business Size Determinations:** Rules of business size, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) Standards. You must apply current SBA business size standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. 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 (13 CFR 121.402) over the firms previous three fiscal years.
- E. **Ownership Determinations:** A firm must be at least 51 percent owned by socially and economically disadvantaged individuals. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The same rules will apply in situations in which marital assets form a basis for ownership of a firm. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

- F. Control Determinations:** In determining whether socially and economically disadvantaged owners control a firm, LAMTD must consider all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

LAMTD will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

- G. Other Considerations:** Citrus Connection will consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

DBE firms and firms seeking DBE certification shall cooperate fully with Citrus Connection's requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification. A firm that is not owned by such individuals, but instead is owned by another firm even a DBE firm-cannot be an eligible DBE.

# CHAPTER VIII

## CERTIFICATION PROCEDURES

### A. Unified Certification Program

Citrus Connection shall participate as an equal partner in the State of Florida Department of Transportation Unified Certification Program (UCP). Citrus Connection shall adhere to the requirements of 49 C.F.R. Part 26 subpart E Subparagraph 26.81 with regard to its participation in the state UCP.

Within three years of March 4, 1999, Citrus Connection and the other recipients in the state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. Subject to approval by the Secretary, the UCP in that state may take any form acceptable to the recipients in that state. The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions.

Certification decisions by the UCP shall be binding on all DOT recipients within the state. The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

The “home state” UCP shall share its information and documents that are considering the firm’s application. A UCP may accept the certification of any other UCP or DOT recipient. Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print.

### B. Initial Certification Process

Citrus Connection will ensure that only firms certified as eligible DBEs under this section participate as DBEs in Citrus Connection’s program. Citrus Connection will take all the following steps in determining whether a DBE firm meets the standards of subpart D of 49 CFR Part 26.

1. Citrus Connection will perform an on-site visit to the offices of the firm. Citrus Connection will interview the principal officers of the firm and review their resumes and/or work histories. Citrus Connection will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in its jurisdiction or local area. Citrus Connection may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

2. If the firm is a corporation, Citrus Connection will analyze the ownership of stock in the firm;
3. Citrus Connection will analyze the bonding and financial capacity of the firm;
4. Determine the work history of the firm, including contracts it has received and work it has completed;
5. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work; if any;
6. Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
7. Citrus Connection will require potential DBEs to complete and submit an appropriate application form.

**C. Recertification**

1. The certification is valid for three (3) years beginning on the date Citrus Connection certified the applicant as a Disadvantaged Business Enterprise
2. Upon expiration of the three-year period, a Business that desires recertification must:
  - (a) Return a completed recertification form as provided by Citrus Connection; and
  - (b) Comply with the requirements specified in this section which apply to the certification process.

**D. Denials**

An applicant may protest Citrus Connection's denial of its application for certification by filing a written protest with Citrus Connection within 30 days after the date of the notice of the disposition to the applicant. Citrus Connection staff will then prepare a recommendation for review by the Recommended Official. The decision of the Recommendation Official is administratively appealable to the Department of Transportation.

**E. Removal Procedures**

Citrus Connection shall revoke the certification of a Business if it is determined that a Business does not meet the definition of a Disadvantaged Business Enterprise or that Business fails to provide requested information in connection with a certification review conducted by Citrus Connection. Prior to taking formal action, Citrus Connection staff shall provide the Business with written notice of the proposed revocation. Citrus Connection staff shall then prepare a recommendation regarding the proposed revocation for review by the Reconsideration Official. The decision of the Reconsideration Official is administratively appealable to the Department of Transportation.

**F. DOT Review:**

If a firm is denied certification or whose eligibility is removed by a recipient, Citrus Connection may make an administrative appeal to the Department. Appeals are mailed to the following address: Department of Transportation, Office of Civil Rights, 400 7<sup>th</sup> Street, SW, Room 2401, Washington, DC 20590. The recipient's decision stays in effect while it is considering an appeal.

When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The department may extend this time period on the basis of a recipient's showing of good cause.

As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed. The Department's policy is to make its decision within 180 days of receiving the complete administrative record. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

# CHAPTER IX

## MAINTENANCE OF RECORDS AND REPORTS

### Recordkeeping, Monitoring and enforcement

Citrus Connection will monitor the progress of Citrus Connection's Disadvantaged Business Enterprise Program. At a minimum, this record keeping system will identify and assess Disadvantaged Business Enterprise contract awards, prime contractors progress in achieving Disadvantaged Business Enterprise subcontract goals and other efforts to assist Disadvantaged Business Enterprises. specifically, Citrus Connection will maintain records showing:

- (a) Procedures which have been adopted to comply with Citrus Connection's requirements;
- (b) Awards to Disadvantaged Business Enterprises, including names of contractors and subcontractors, nature of the work/services to be performed, and the percentage of Disadvantaged Business Enterprise participation per contract. To assist in this effort, Citrus Connection will obtain regular reports from prime contractors on their progress in meeting contractual Disadvantaged Business Enterprise obligations;
- (c) Specific efforts to identify and award contracts to Disadvantaged Business Enterprises;
- (d) Copies of direct mailings to Disadvantaged Business Enterprises;
- (e) Pre-bid conference information as it relates to Citrus Connection's Disadvantaged Business Enterprise provisions;
- (f) Requests for assistance from Disadvantaged Business Enterprises interested in bidding/proposing on Citrus Connection contracts and subcontracts;
- (g) Workshops, seminars and training programs conducted for Disadvantaged Business Enterprises; and
- (h) Efforts to assist Disadvantaged Business Enterprises in acquiring bonding and insurance.

**A. Bidders List**

Citrus Connection shall create and maintain a bidders list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. For every firm, the following information must be included:

1. Firm Name
2. Firm address
3. Firm status as a DBE or non-DBE
4. The age of the firm; and
5. The annual gross receipts of the firm

**B. Monitoring Payments to DBEs**

Contractors shall be required to submit monthly utilization reports concurrently with the submission of their invoice. The monthly utilization reports shall be compared to their initial submission used for award of the contract. The contractor shall be required to demonstrate the use of and at the level of use for each previously identified DBE subcontractor. Failure to demonstrate the use of identified DBE subcontractors may result in withholding of payment until the contractor is in compliance or in extreme instances termination for material breach of contract. At the end of a contract Citrus Connection shall require a contractor to report to the agency the identity and the amount paid to each Disadvantaged Business Enterprise to whom the contractor has awarded a subcontract for the purchase of supplies, materials and equipment.

**C. Reporting to FTA**

Citrus Connection will create at least quarterly Disadvantaged Business Enterprise reports that may be reviewed by the Federal Transit Administration. These reports shall include as a minimum:

- (1) The number of contracts awarded to Disadvantaged Business Enterprises;
- (2) A description of the general categories of contracts awarded to Disadvantaged Business Enterprises;
- (3) The dollar value of contracts awarded to Disadvantaged Business Enterprises;
- (4) The percentage of the dollar value of all contracts awarded to Disadvantaged Business Enterprises during the preceding quarter; and
- (5) An indication of whether the percentage met or exceeded the Disadvantaged Business Enterprise goals specified per contract.

# CHAPTER X

## PUBLIC PARTICIPATION AND OUTREACH EFFORTS

### PROCEDURES TO ENSURE OPPORTUNITIES

Specific affirmative procedures to be utilized by the Disadvantaged Business Enterprise Officer and contracts/procurement staff to ensure maximum practicable opportunities for Disadvantaged Business Enterprise participation include the following:

#### 1. Direct Assistance to Disadvantaged Business Enterprises

Citrus Connection's Disadvantaged Business Enterprise program will assist Disadvantaged Business Enterprises in overcoming barriers to program participation. This assistance will be offered directly by Citrus Connection, as well as by referral to other assistance agencies through established, comprehensive and continuous programs. Businesses requiring management and technical assistance will be identified through a questionnaire, personal experience with these Businesses and requests for assistance. Citrus Connection will offer the following assistance directly to Disadvantaged Business Enterprises:

- (a) Citrus Connection staff will provide information on Citrus Connection contractual requirements and projected procurement opportunities.
- (b) Citrus Connection staff will provide counseling and training sessions for Disadvantaged Business Enterprises. Responsible Citrus Connection staff will be available to interested Business representatives to explain (in detail) instructions for preparation of bid specifications, Citrus Connection procurement policies, procedures and general bid requirements. The Disadvantaged Business Enterprise Officer will coordinate and follow-up all requests for assistance to insure that all necessary information was provided.
- (c) Upon request, Disadvantaged Business Enterprises will be provided with information on specific reasons for unsuccessful bids through debriefing sessions.
- (d) Information on Citrus Connection's Disadvantaged Business Enterprise program will be disseminated through written materials, seminars, workshops and specialized assistance to individual firms.

2. Citrus Connection will require contractors and subcontractors to comply with applicable Disadvantaged Business Enterprise Requirements. Citrus Connection staff are available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance includes:
  - (a) Clear identification of Citrus Connection's Disadvantaged Business Enterprise provisions in all Citrus Connection solicitations including sanctions for noncompliance;
  - (b) Pre-proposal/bid conferences to explain Citrus Connection's Disadvantaged Business Enterprise Program;
  - (c) Identification of certified Disadvantaged Business Enterprises per Citrus Connection solicitation including a list of certified Disadvantaged Business Enterprises available to document holders;
  - (d) Lists of document holders are available to interested Disadvantaged Business Enterprises; and Citrus Connection staff are available to assist bidders/proposers in developing their Disadvantaged Business Enterprise Programs.
3. Additionally, Citrus Connection staff will monitor Disadvantaged Business Enterprise participation levels on projects throughout the duration of a contract. Contractors violating contract provisions regarding Disadvantaged Business Enterprise participation are subject to sanctions, including contract termination.

Information dissemination and communication with Disadvantaged Business Enterprises is an integral part of Citrus Connection's Disadvantaged Business Enterprise Program. As part of its outreach program, Citrus Connection's Disadvantaged Business Enterprise staff will solicit input from representatives of Disadvantaged Business Enterprises, trade associations and community organizations. This input will serve several important functions including:

- (a) Providing information to identify additional Disadvantaged Business Enterprise firms;
  - (b) Assisting in refining Disadvantaged Business Enterprise Program goals and procedures; and
  - (c) Providing an independent assessment of the effectiveness of Citrus Connection's Disadvantaged Business Enterprise Program.
4. Agreements between a bidder/proposer and a Disadvantaged Business Enterprise in which the Disadvantaged Business Enterprise promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.