

RESOLUTION NO. 1999-115

A RESOLUTION APPROVING A REVISED PROGRAM MANUAL FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FOR FEDERALLY FUNDED CONTRACTS.

WHEREAS, the Surface Transportation Assistance Act of 1982 and the Regulations promulgated thereunder at 49 CFR Part 26, require the establishment of a revised program manual for the participation of Disadvantaged Business Enterprises in federally funded contracts let by the Greater Cleveland Regional Authority; and

WHEREAS, The Authority's revised Disadvantaged Business Enterprise Program Manual complies with all federal mandates as provided in the Code of Federal Regulations (49 CFR 26); and

WHEREAS, pursuant to the Disadvantaged Business Enterprise Program, the General Manager has met with the Civil Rights Officer to determine that the revised manual supports the Authority's policy of supporting the fullest possible participation of firms owned and operated by socially and economically disadvantaged individuals in contracting opportunities of the Authority.

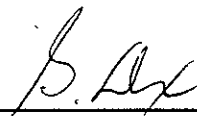
NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority:

Section 1. The revised program manual for Disadvantaged Business Enterprise participation in all contracting by this Authority, as set forth in Attachment A and which is fully incorporated herein, is hereby approved. The General Manager is directed to submit to the Federal Transit Administration (FTA) this program manual in accordance with the requirements of 49 CFR, part 26.

Section 2. That this resolution is effective as of September 1, 1999..

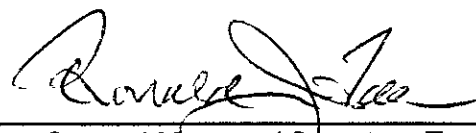
Attachment A—Revised 1999 DBE Program Manual.

Adopted: August 24, 1999



President

Attest:



General Manager/ Secretary-Treasurer

Attachment A



**Greater Cleveland
Regional Transit
Authority**

**Disadvantaged Business
Enterprise Program Manual**

1 September 99

Greater Cleveland Regional Transit Authority

Office of Small Business & Employment Opportunity

Disadvantaged Business Enterprise Program Manual

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Definitions of Terms

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

Objectives/Policy Statement (26.1, 26.23)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity (formerly the Office of Equal Opportunity) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy -

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

The Executive Director of the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has been delegated as the DBE Liaison Officer. In that capacity, the Executive Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Greater Cleveland Regional Transit Authority in its financial assistance agreements with the Department of Transportation.

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has disseminated this policy statement to the Board of Trustees and all the components of our organization. We have distributed this policy statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The policy statement will be distributed as follows:

1. Regular U.S. mail
2. Community based informational meetings
3. Posting on the GCRTA WebPage

[Signature of General Manager] _____ Date: _____

Nondiscrimination (26.7)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (26.21)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Quotas (26.43)

The Greater Cleveland Regional Transit Authority does not use quotas in any way in the administration of its DBE program.

DBE Liaison Officer (DBELO) (26.45)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has designated the following individual as its DBE Liaison Officer:

Myers Rollins, Jr.
GCRTA
1240 West 6th St.
Cleveland, OH 44113
(216) 781-4466 / (216) 781-4752 fax
mrollins@gcrt.org

In that capacity, Myers Rollins, Jr. is responsible for implementing all aspects of the DBE program and ensuring that the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity complies with all provisions of 49 CFR Part 26. Myers Rollins, Jr. has direct, independent access to the General Manager of the Greater Cleveland Regional Transit Authority concerning DBE program matters. The DBELO has a staff of three professional employees assigned to the DBE program on a full-time basis and two support personnel who devote a portion of their time to the program. An organizational chart displaying the DBELO's position in the organization is found in Attachment A to this program.

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

1. Gathers and reports statistical data and other information as required by DOT.

2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the General Manager on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Ohio.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the Greater Cleveland Regional Transit Authority's updated directory of certified DBEs
15. Implements and maintains a business development program

Three Business Development Specialists assist the DBELO in achieving the above initiatives.

Federal Financial Assistance Agreement Assurance (26.13)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity has signed the following assurance, applicable to all DOT-assisted contracts and their administration – which will appear in financial assistance agreements with its subrecipients:

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity 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 (31U.S.C. 3801 et seq.).

The Maple Heights and North Olmstead Transit Authorities are the subrecipients that must adhere to this assurance.

DBE Financial Institutions

It is the policy of the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made efforts to identify and use such institutions through conversations with representatives in the DBE business community. To date, we have not identified any such institutions. As a result of our outreach efforts we will continue to attempt to identify DBE financial institutions in our general service area.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Directory (26.25)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, fax number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is revised on a quarterly basis and it is distributed upon request through print, diskette or electronic mail. The Directory may be found in Attachment B to this program document.

Copies of the directory may be obtained by contacting the:

Greater Cleveland Regional Transit Authority
Office of Small Business & Employment Opportunity
1240 West 6th St.
Cleveland, OH 44113
(216) 566-5044 / (216) 781-4752 fax
lstallworth@gcrta.org

Overconcentration (26.33)

The GCRTA office has conducted an overconcentration study and as such it is determined that no overconcentration exists.

Business Development Programs (26.35)

[Note: It is necessary to have a program element addressing this subject only if a recipient has decided, for any reason, to have a business development or mentor-protégé program. If a recipient has such a program element, it would describe the rationale for having the program element, the specific provisions of the element (e.g., who is eligible to participate, how does the program element work), and how interested persons would obtain information about the program element.]

Required Contract Clauses (26.13, 26.29)

Contract Assurance

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity. The prime contractor agrees further to return retainage payments to each subcontractor within [specify same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity. This clause applies to both DBE and non-DBE subcontractors.

[Note - This is sample language, and recipients can use existing prompt payment clauses or draft their own, as long as they meet the substantive requirements of 26.29. This portion of the program must also state what sanctions/consequences the recipient attaches to noncompliance with the prompt payment clause and the procedures through which they are enforced. In addition, this portion of the program may also include other prompt payment-related provisions, such as an alternative dispute resolution mechanism that the recipient chooses to use.]

Monitoring and Enforcement Mechanisms (26.37)

We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment C lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities. In the event of a debarment, action will be coordinated by the Office of Small Business & Employment Opportunity and the legal and procurement departments.

Overall Goals (26.45)

Amount of goal

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity 's overall goal for FY 20__ is the following: ___ % of the Federal financial assistance we will expend in DOT-assisted contracts. [FTA recipients add (exclusive of FTA funds to be used for the purchase of transit vehicles).]

[Note - This statement of the overall goal is intended for information of public users of the program, and does not imply that DOT, as such, approves the goal when it approves the program. If a recipient is setting an overall goal on a project basis rather than on an annual basis, it could the following alternative language]

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity 's overall goal for the following time period (20_ - 20_) is the following: _____ % of the Federal financial assistance we will expend in DOT-assisted contracts. [FTA recipients add (exclusive of FTA funds to be used for the purchase of transit vehicles).]

Given the amount of DOT-assisted contracts the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity expects to let during this fiscal year/project, which is \$_____, this means that we have set a goal of expending \$ _____ with DBEs during this fiscal year/project.

Method

The following is a summary of the method we used to calculate this goal:

[Note - This summary need not be as extensive as the actual overall goal submission, which is a separate document. It should address the following points:

The method used to calculate the relative availability of DBEs ("base figure") for "Step 1" of the process (see 26.45(c)). The base figure is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. For example, the program would state which of Examples 1-4 from 26.45 (or which variation or alternative approach) the recipient is using.

The data source(s) used to derive the numerator and denominator in the calculation (e.g., for a recipient that used Example 1, there were X DBEs in our Directory and Y total firms in the following SIC codes and following Counties found in the Census Bureau's CBP database).
The relative availability percentage.

The data sources used in implementing "Step 2" (see 26.45(d)). This step is intended to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. For example, this portion of the program could "Our history of DBE achievements was __%, our disparity study showed that availability of DBEs was _____ %, we have the following summarized information about barriers to entry or competitiveness of

DBEs in our programs from the following sources"). From this data, we have adjusted our base percentage as follows: [Describe reasoning process that led to your particular adjustment from the Step 2 data you have]

Transit Vehicle Manufacturers (26.49)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

TVMs are required to submit separate annual percentage overall goals for the utilization of DBEs to the FTA Administrator. As provided in 49 CFR part 26 (as amended), the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will require any TVM bidding on DOT-assisted Authority TVM solicitations to:

1. Certify that it has submitted the required annual percentage overall DBE goals to FTA
2. Certify that FTA has either approved its annual percentage overall DBE goals or has not disapproved the goals
3. Provide proof of that acceptance by FTA

A transit vehicle distributor or dealer must provide certification of manufacturer compliance for those vehicles the distributor or dealer seeks to offer. The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will include a provision in its bid specifications requiring the above certification from TVMs, distributors, or dealers, as a condition of permission to bid. (A sample of the TVM certification to be used in our transit vehicle procurements is provided in A current listing of TVMs, supplied by the DOT)

Process

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity submits its overall goal to DOT on August 1 of each year.

Before establishing the overall goal each year, the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will convene a meeting first, with internal stakeholders. The stakeholders will include representatives from the development, procurement and finance departments of the Greater Cleveland Regional Transit Authority and the meeting shall be chaired by the DBELO.

[Note - The consultation should include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations.]

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. [Program should state the media in which this notice issued; e.g., newspapers, available minority-focus media, trade

publications, websites.] Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses. We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity uses the following race-neutral means to increase DBE participation: [See 26.51(b) for examples - list the things that you actually do.]

We estimate that, in meeting our overall goal of _____%, we will obtain _____% from race-neutral participation and _____% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: [summarize how the estimate was derived; e.g., from private sector MBE/WBE participation, DBE participation of DBEs in local procurement programs in which there are no DBE contract goals, extent of your race-neutral business assistance efforts].

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (26.51)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will use contract goals to meet any portion of the overall goal the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Good Faith Efforts (26.53)

If an offerer does not meet the DBE goal, the offeror shall be eligible for award of the contract if it can be demonstrated to the satisfaction of the GCRTA's Office of Small Business and Employment Opportunity that a good faith effort has been made to meet the DBE goal. In evaluating an offeror's good faith effort submission, the GCRTAOSM&EO will only consider those documented efforts that occurred prior to receipt of bids, in the case of a request for competitive sealed proposals (ITB)

Information to be submitted:

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity treats bidder/offerors' compliance with good faith efforts requirements as a matter of **[responsiveness] or [responsibility]**. **[Note - Recipients can choose either approach; program should mention which choice the recipient made].**

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information **[State the time when bidder/offerors must submit the information, which will depend on whether you have chosen the responsiveness or responsibility approach.]**

1. The name, address, phone and fax number of DBE firms that will participate in the contract;
2. A detailed description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Some examples of good faith efforts include but are not limited to:

- A) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising an/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

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- C) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D) Negotiating in good faith with interested DBEs. It is the offerer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- E) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some 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. Also, 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.
- F) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- G) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- H) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- I) Effectively using the services of available minority/women community organizations: minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

The following personnel are 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 or responsible]**: Business Development Specialists.

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

Administrative reconsideration

Within five (5) days of being informed by the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity that it is not **[responsive, responsible]** because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official:
Myers Rollins, Jr.
GCRTA
Office of Small Business & Employment Opportunity
1240 West 6th St.
Cleveland, OH 44113
(216) 781-4466 / (216) 781-4752 fax
mrollins@gcrta.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Replaced on a Contract

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Note - Include the administrative remedies you will use for noncompliance (see 26.53(f)(3)). The following two sentences are examples of such remedies.]

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Counting DBE Participation (26.55)

The Greater Cleveland Regional Transit Authority will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Certification (26.61 - 26.91)

The Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in

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DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decision based on the facts as a whole.

Process

Our certification application form and documentation requirements are found in Attachment D to this program.

Details concerning the certification process are found in Attachment E to this program. For more information, or to apply for certification, firms should contact:

Leon Stallworth
GCRTA
Office of Small Business & Employment Opportunity
1240 West 6th St.
Cleveland, OH 44113
(216) 566-5044
lstallworth@gcrta.org

De-Certification Process

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment F to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that the DBELO will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the DBELO will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

If we deny a firm's application or decertify it, it may not reapply until one year has passed from our action.

Unified Certification Program

The Greater Cleveland Regional Transit Authority in conjunction with the Ohio Department of Transportation will participate on an Ad Hoc Committee to develop a Uniform Certification Program in conformance with the regulations.

Certification Appeals

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

Department of Transportation
Office of Civil Rights Certification Appeals
Branch 400 7th St., SW
Room 2104
Washington, DC 20590

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

If recipient has a system for administrative appeals of certification decisions, it should mention it here and provide details of the procedure in

an Attachment. The program should inform the public that resort to this system is not a remedy a firm need exhaust before making a certification appeal to DOT under 26.89].

"Recertifications"

The eligibility of DBEs that we certified under former part 23 will be reviewed, to make sure that they meet the standards of Subpart D of part 26. We will complete this review no later than three years from the most recent certification date of each firm. **[Note - Recipient should include its schedule for this review process. This schedule need not name the review date for each firm, but should include milestones; e.g., our {number} most active firms by {date}; our {number} next most active firms by {date}, etc.]**

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility **[state interval at which you intend such reviews. Part 26 says you may not conduct such reviews more often than every three years, but you are not required to conduct them at any specific interval.]** These reviews will include the following components **[list elements of review; e.g., will an on-site review or a filling out a new application be mandated, or will recipient make these determinations on a case-by-case basis?]**

"No Change" Affidavits and Notices of Change

All DBEs shall be required to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the company's application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit can be found in Attachment H and reads as follows:

I affirm that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity under 26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

We will notify all currently certified DBE firms of these obligations **[program should state how and when]**. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a

firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

All disadvantaged owners of applicants and of currently certified DBEs whose eligibility under part 26 we review, shall be required to submit a statement of personal net worth. This requirement became effective March 4, 1999. Attachment I sets forth the personal net worth form.

Bidders List

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

We will collect this information in the following ways:

- Via pre-bid/proposal conferences
- A contract clause requiring the prime to report all pertinent information of all firms who quote to them on subcontracts
- A notice in all solicitations
- Via bid/proposal submissions
- From the procurement department

Monitoring Goal Attainment

To ensure that all obligations under contracts awarded to DBEs are met, the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity will review the contractor's DBE involvement efforts during the performance of the contract. Prime contractors will be required to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Greater Cleveland Regional Transit Authority's Office of Small Business & Employment Opportunity or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Concurrent with the submission of payment requests, prime contractors shall submit a Vendor Payment Report which can be found in Attachment L of this program. A running tally will be kept of actual payments to DBE firms for work committed to them at the time of contract award. We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

This compliance monitoring will also include on-site inspection on various types of contracts when internal desk audits reveal questionable information or as determined by the Business Development Specialist. This provides the opportunity to confirm the utilization of DBE subcontractors as listed on the Schedule of DBE Participation submitted by the prime contractor. The Contract Administrator is responsible for providing the Business Development Specialist with an approved contract work schedule together with a list of all subcontractors for

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each approved contract. This will assist in scheduling on-site compliance reviews. Upon completion of same, a site visit report will be prepared with a copy submitted to the Contract Administrator.

NOTE: all reports of non-compliance will be referred for legal action under the Greater Cleveland Regional Transit Authority's DBE program provision and applicable contract provisions. Also, the Greater Cleveland Regional Transit Authority may withhold all or part of any progress payments otherwise due a contractor if the contractor fails to make prompt payments to its subcontractors, suppliers, materialmen or laborers.

More information regarding monitoring goal attainment can be found in Attachment J of this program.

Reporting to DOT

Reports for DBE participation to DOT will be made as follows:

- on a quarterly basis, using DOT Form 4630
- reports will reflect payments actually made to DBEs on DOT assisted contracts.

Confidentiality

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

Attachments

- A. Organizational Chart for the Greater Cleveland Regional Transit Authority
- B. DBE Directory
- C. Monitoring and Enforcement Mechanisms
- D. DBE Certification Application
- E. Certification Process
- F. Appeal Process
- G. Schedule for Re-Certification
- H. DBE “No Change” Affidavit
- I. PNW Affidavit
- J. Monitoring Goal Attainment
- K. Definitions
- L. Vendor Payment Report
- M. 49 CFR part 26