

RESOLUTION NO. 2004- 124

RECINDING RESOLUTION NO. 1999-115 AND ADOPTING A REVISED PROGRAM MANUAL FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FOR FEDERALLY FUNDED CONTRACTS

WHEREAS, the Board of Trustees adopted Resolution No. 1999-115 on August 24, 1999, approving a revised Program Manual for Disadvantaged Business Enterprise Participation for Federally-funded contracts; and

WHEREAS, the Transportation Equity Act for the 21st Century and the Federal Transit Administration (FTA) Regulations for the Disadvantaged Business Enterprise (DBE) program, Section 49 of the Code of Federal Regulations, Part 26, require program manual revisions as significant changes occur in the established program for the participation of Disadvantaged Business Enterprises in federally funded contracts let by the Greater Cleveland Regional Authority; and

WHEREAS, significant changes have occurred as it relates to GCRTA's DBE Program; and

WHEREAS, the current manual on file with the Federal Transit Administration expires on September 30, 2004; and

WHEREAS, The Authority has updated its Disadvantaged Business Enterprise Program Manual which complies with all federal mandates as provided in the Code of Federal Regulations (49 CFR 26).

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

Section 1. That Resolution No. 1999-115 is hereby repealed.

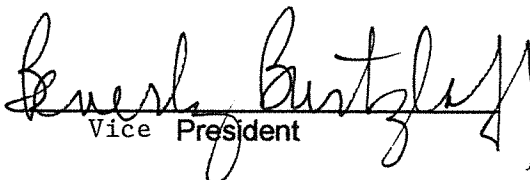
Section 2. That the updated program manual for Disadvantaged Business Enterprise participation in all contracting by this Authority, as set forth in Attachment A and which is fully incorporated herein, is hereby approved.

Section 3. That 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 regulations.

Section 4. That this resolution shall become effective immediately upon its adoption.

Attachment A—Disadvantaged Business Enterprise Program Manual
Revised September 2004

Adopted: September 21, 2004


Vice President

Attest: 
CEO/General Manager/Secretary –Treasurer

Greater Cleveland Regional Transit Authority

Disadvantaged Business Enterprise Program Manual



1240 West 6th Street
Cleveland, Ohio 44113

September 2004

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I. PURPOSE/SCOPE

The Greater Cleveland Regional Transit Authority (the Authority) is committed to diversity and ensuring that all persons have an equal opportunity to receive and participate in Authority contracts. The Authority demonstrates this commitment in leveling the playing field for all businesses interested in contracting opportunities with the Authority through the implementation and operation of its Disadvantaged Business Enterprise (DBE) Program. The Authority is committed to nondiscrimination in its contracting process, continually increasing the number of Authority certified DBE firms, and encouraging the participation of DBE firms in prime contracting and subcontracting opportunities. The Authority also provides information and programs that will assist DBE firms in being able to achieve the goal of successfully competing and functioning outside of the parameters of the Authority's DBE Program.

The Authority receives federal assistance from the United States Department of Transportation (DOT). The DOT requires all Federal Transit Administration (FTA) recipients who will award prime contracts exceeding \$250,000 in FTA funds in a Federal Fiscal Year to have a Disadvantaged Business Enterprise (DBE) program that meets the requirements of 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

The Authority published the Disadvantaged Business Enterprise Program Manual in August 1999, which was approved by the Federal Transit Administration in May 2000. This revision of the DBE Program manual incorporates significant changes made to the Greater Cleveland Regional Transit Authority's approved DBE program.

II. POLICY STATEMENT

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

It is the policy of the Authority to ensure that DBEs, as defined in Part 26 of the Code of Federal Regulations, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the Authority's policy:

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

- To assist in the development of firms that can compete successfully in the market place outside the DBE Program.

The Authority will never exclude any person(s) from participation in, deny any person(s) 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 Authority will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Loretta Kirk, Deputy General Manager of Finance and Administration has been delegated as the DBE Liaison Officer. In that capacity, Loretta Kirk, Deputy General Manager of Finance and Administration is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is given the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with the Department of Transportation.

The Greater Cleveland Regional Transit Authority has disseminated this policy statement to the Greater Cleveland Regional Transit Authority Board of Trustees and all of the components of the organization. The Authority has distributed this statement to DBE and non-DBE business communities that perform work for the Authority on DOT-assisted contracts.

Joseph A. Calabrese, CEO
General Manager/Secretary-Treasurer

Date

III. GENERAL REQUIREMENTS

A. Objectives

The objectives are found in the policy statement on the first page of this program.

B. Applicability

The Authority is the recipient of federal transit funds authorized by Federal transit laws codified at 49 U.S.C. Section 5301 et seq.; Title 23, United States Code (Highways); or the Transportation Equity Act for the 21st Century, Pub. L. 105-178, June 9, 1998, 23 U.S.C. Section 101 note, amended by the TEA-21 Restoration Act, Pub. L. 105-206, July 22, 1998, 23 U.S.C. Section 101 note, other amendments to TEA-21, or to other Federal legislation administered by FTA to the extent FTA so determines.

C. Definitions

The Authority has adopted the definitions contained in Section 26.5 of 49 CFR Part 26 for this program. The definitions can be found in **Attachment J** of this program.

D. Reporting Keeping Requirements

The Authority will report DBE participation on a semi-annual basis using DOT Form 0603. This report will reflect payments actually made to DBEs on DOT-assisted contracts. The Authority will provide form 0603 to FTA by June 1 and December 1 of each year.

E. Bidders List

The Authority will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculate overall goals. The Authority will collect this information in the following ways:

- Notice in Solicitations
- Contract Clause
- Bid Proposal Submissions

F. Federal Financial Assistance Agreement

The Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

- Assurance: The Greater Cleveland Regional Transit Authority 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 Authority shall take necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Authority'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 Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- **Contract Assurance:** The Authority will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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 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 remedies as the recipient deems appropriate.

IV. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates

The Authority has received a grant of \$250,000 or more in FTA planning, capital, and or operating assistance in a Federal Fiscal Year. The Authority will continue to carry out this program until all funds from DOT financial assistance have been expended. The Authority will provide to DOT updates representing significant changes in the program.

B. DBE Liaison Officer (DBELO)

The Authority has designated the following individual as the DBE Liaison Officer (DBELO):

Deputy General Manager
Finance and Administration
Greater Cleveland Regional Transit Authority
1240 W. 6th Street,
Cleveland, Ohio 44113

216/566-5275 (Phone)
216/566-5267 (Fax)

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the Authority complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the CEO, General Manager/Secretary-Treasurer, concerning DBE program matters. 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 with other appropriate officials. The DBELO has a staff of four (4) to assist in the administration of the program. Program duties and responsibilities include but are not limited to the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase orders for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Establishes DBE goals for solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
- Monitors GCRTA progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO/Board of Trustees on DBE matters and achievement.
- Chairs the DBE Advisory Committee.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in the State of Ohio.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains the GCRTA updated directory on certified DBEs.

C. DBE Financial Institutions

It is the policy of the Authority 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 contract to make use of these institutions. The Authority has made the following efforts to identify and use such institutions: Search the Federal Reserve Website for a listing of all minority (including female) owned banks, and local listings of certified D/S/M/FBE financial organizations.

As of September 2004, the Authority has identified the following such institutions:

1. The Hicks Insurance Agency
1875 South Taylor Rd.
Cleveland Heights, Ohio 44118
All lines of insurance and financial services
2. Rockport Financial
31023 Center Ridge Road
Westlake, Ohio 44145
Insurance, investments, employee benefit plans
3. Goode Investment Management, Inc.
50 Public Square, Suite 104
Cleveland, Ohio 44113
Investment Advice
4. RM Investment Management, Inc.
3000 Woodhill Road
Cleveland, Ohio 44104
Portfolio management
5. SBK Brooks Investment, Inc.
824 Terminal Tower
50 Public Square
Cleveland, Ohio 44113
Misc. Business credit institutions, other non-depository credit

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

D. Prompt Payment Mechanisms

The Authority will comply with the prompt payment requirements and include the following language in all contracts:

The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from receipt of each payment the Contractor receives from the Authority. The Contractor agrees further to release retainage payments (if applicable) to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed and final payment has been made to the contractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the GCRTA Contracting Officer.

E. Directory

The Authority maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work (NAICS code) the firm has been certified to perform as a DBE. The Directory is updated monthly and is available at:

Greater Cleveland Regional Transit Authority
Office of Business Development
1240 W. 6th Street
Cleveland, Ohio 44113
(216) 566-5044
Copies can be picked up between 8:00am – 5:00pm, Monday - Friday

-or-

The Office of Business Development webpage: www.riderta.com

The Directory may be found in **Attachment B** to this program document.

F. Over-Concentration

The Authority has not identified that over-concentration exists in the categories of work that DBE firms are available to perform.

G. Business Development Programs

The Authority plans to establish a business development program.

H. Monitoring and Enforcement Mechanisms

The Authority will apply the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- The Authority 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 49 CFR Part 26, Section 26.109.
- The Authority will consider similar action under its legal authorities, including responsibility determinations in future contracts. **Attachment C** lists the regulations, provisions, and contract remedies available to the Authority in the event of non-compliance with the DBE regulations by a participant in the Authority's procurement activities.

- The Authority will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by submission of vendor payment report by the prime contractor and on-site project visits by Authority staff. The Authority will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

V. GOALS, GOOD FAITH EFFORTS, AND COUNTING

A. Set-asides or Quotas

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

B. Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment D** to this program. The overall goals will be updated annually.

The Authority will submit its annual overall goal to FTA by August 1 of each year. Before establishing the overall goal each year, the Authority will consult with the DBE Program Advisory Committee. This committee will consist of the following:

- Business, Trade and Social organizations
- Certified DBE firms
- Authority staff

Following this consultation and the development of the goal, the Authority 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 the Authority's, Main Office for 30 days following the date of the notice. Comments will be accepted from the general public and FTA for 45 days from the date of the notice. The goal will be published in local newspapers, minority focused media, the Authority's website and various trade-publications. The Authority will issue this notice by June 1 of each year. The Authority will hold a public meeting to discuss the proposed goal. Prior to sending the proposed goal to FTA, the Authority will present the proposed goal to the GCRTA Board of Trustees for approval.

The Authority will begin using the overall goal on October 1 of each year, unless otherwise notified by the FTA.

C. Transit Vehicle Manufacturers (TVM) Goals

The Greater Cleveland Regional Transit Authority 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

section 26.49 (b-c) of the Code of Federal Regulations. The language included in all Transit Vehicle Manufacturers solicitations states the following:

Transit Vehicle Manufacturers must establish and submit for FTA's approval an annual overall percentage goal. In setting the overall goal, you should be guided, to the extent applicable, by the principles underlying 49 CFR Part 26.45. The base from which the TVM calculates this goal is the amount of FTA financial assistance included in transit vehicle contracts TVM's will perform during the fiscal year in question. TVM's must exclude from this base, funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. These requirements and procedures with respect to submission and approval of overall goals apply to TVM's as they do to the Authority. As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

D. Breakout of Estimated Race-Neutral & Race-Conscious Participation

Race-Neutral – Measures used to assist all small businesses

Race-Conscious – Measures used specifically in assisting only DBEs

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment D** to this program. This breakout will be updated annually when the goal calculation is updated.

E. Contract Goals

The Authority will use contract goals to meet a portion of the overall goal. The Authority does not project being able to meet the goal using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, the contract goals will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The Authority will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The Authority 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 (availability of DBEs to perform the particular type of work and projected subcontractable dollar amount or percentage of work available to DBEs).

The Authority will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

F. Good Faith Efforts Procedures

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. Examples in determining good faith efforts are:

- Did the offeror attend any scheduled pre-solicitation or pre-proposal meetings to inform DBEs of contracting and subcontracting opportunities?
- Did the offeror advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities? If so, show documentation of the publications and when advertised.
- Did the offeror provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively? If so, provide proof or a record of the solicitation(s).
- Did the offeror follow up with the DBE firms interested in participating? If so, show documentation of which DBEs contacted and when the follow up occurred.
- Did the offeror select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
- Did the offeror provide adequate information about plans, specifications, and/or contracting requirements?
- Did the offeror negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons? Please indicate the DBEs that you attempted to contract with and the reasons for rejections.
- Did the offeror make efforts to provide assistance to obtain bonding, lines of credit, or insurance (if applicable)?
- Did the offeror effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc., that have knowledge of available DBE firms or the names of organizations to locate such firms? If so, show documentation of these efforts, the organizations and the contact persons.

Attachment E to this program provides forms 1 & 2 required to demonstrate Good Faith Efforts.

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 complaint or non-complaint.

Business Development Specialist
Greater Cleveland Regional Transit Authority
Office of Business Development
1240 W. 6th Street
Cleveland, Ohio 44113

The Authority will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before committing to the performance of the contract by the bidder/offeror.

G. Information To Be Submitted In Solicitations for DBE Participation

The Authority treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

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

The forms found at **Attachment E** can be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification is intended for use in both non-construction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents.

Sample Bid Specification:

The Authority is committed to encouraging participation by Disadvantaged Business Enterprises (DBE) in contracts let by the Authority. It is the policy of the United States Department of Transportation, as adopted by the Authority, that socially and economically Disadvantaged Business Enterprises, as defined at Title 49, Code of Federal Regulations, Part 26, shall be afforded an equal opportunity in the performance of the Authority's contracts or subsequent subcontracts resulting from this solicitation. In this regard, the offerors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26, and the Authority's DBE Program to ensure that the DBE obligation is met. The selected contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of a resulting DOT-assisted contract.

The Authority has established a contract specific DBE goal of ____% of the work to be performed under this solicitation.

In order to meet the DBE requirements of 49 CFR Part 26, Disadvantaged Business Enterprises will be afforded an opportunity to participate, to an extent reflective of

their availability in the community, in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the Authority determines a DBE participation goal in contracts with potential subcontracting opportunities. This DBE goal will remain applicable to the total contract dollar amount including any modifications.

As noted earlier in the Instructions, offerors are required to disclose their proposed level of DBE participation (expressed as a percentage of the proposed bid price) in the space designated on the solicitation response.

SOLICITATION DBE REQUIREMENTS, TERMS AND CONDITIONS

In addition to any other requirements contained in this solicitation, the following DBE Program requirements must be satisfied and include a representation that:

1. The Offeror has met the goal established by the Authority for this procurement, or
2. The Offeror has made a good faith effort to attain the level of DBE participation sought by the Authority for this procurement

Each offeror must include a statement in Enclosure B-1 for non-construction solicitations or in the designated area of the construction, bid the level of DBE participation attained through such effort. This submittal is regarded as a matter of responsiveness. Failure to make these submittals will serve to disqualify the bid or proposal as non-responsive to this solicitation.

- A. **DBE Participation Plan.** Each offeror should also prepare a complete DBE Participation Plan that sets forth the extent of DBE involvement in this procurement and will be considered in determining Offeror's responsibility.

DBE participation plans shall include the following minimum information:

1. DBE Participation Schedule, (Enclosure B-2/Schedule 19C-1) which includes:
 - a) Names and addresses of the DBE entities that will participate in the contract;
 - b) The dollar amount of the participation of each named DBE;
 - c) A description of the work each named DBE will perform;
 - d) Letter of Intent (Enclosure B-3/Schedule 19C-2) from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.

H. Administrative Reconsideration

Within 3 days of being informed by the Authority that the bidder is not responsive because the bidder 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:

Disadvantage Business Enterprise Liaison Officer
Greater Cleveland Regional Transit Authority
1240 W. 6th Street,
Cleveland, Ohio 44113
Phone - 216/566-5275
Fax – 216/566-5267

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not 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 the Authority reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The Authority 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.

I. Good Faith Efforts when a DBE is replaced on a contract

The Authority 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. The Authority will require in all solicitations that the prime contractor notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the Authority will require the prime contractor to obtain Authority written approval prior to the substitution of a DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor does not comply with this provision, the Authority may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Authority may recommend that the profits from the terminated portion of the DBE subcontract be forfeited by the Contractor.

If the contractor fails or refuses to comply in the time specified, the Authority's 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.

J. Counting DBE Participation

The Authority will only count the value of the work actually performed by a DBE participating on a contract.

VI CERTIFICATION STANDARDS AND PROCEDURES

A. Certification Process

The Authority will use the certification standards of Subpart D of 49 CFR Part 26, **Attachment J**, to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts.

The minimum certification requirements are:

A firm must be a small business as defined by the federal government that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. The management and daily operations of the business must also be conducted by such individuals. The business cannot exceed the minimum gross receipts averaged over a 3-year period and the owner's personal net worth cannot exceed \$750,000.

To be certified as a DBE, a firm must meet all certification eligibility standards. The Authority will make its certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Greater Cleveland Regional Transit Authority
Office of Business Development
1240 W. 6th Street
Cleveland, Ohio 44113
216/566-5044 – Phone
216/781-4752 – Fax

-or-

The GCRTA website: www.riderta.org

The Authority/UCP Certification Application and documentation requirements are found in **Attachment F** to this program.

B. Unified Certification Programs

The Authority is the member of the Ohio Unified Certification Program (UCP) administered by The Ohio Department of Transportation. The UCP will meet all of the requirements of this section. The following is a description of the UCP:

The Ohio UCP will provide one-stop shopping for all DBE firms. One directory will be available for the entire State of Ohio. The State of Ohio has two primary UCP certifying agencies, The Ohio Department of Transportation and The Greater Cleveland Regional Transit Authority. The UCP certifying agencies will use the same application to certify firms and certification eligibility decisions

made by the certification entities will be binding to all UCP certification accepting agencies. The certification will be honored for three years with annual renewals. At the time the certification expires, DBE firms will be required to complete a UCP DBE Re-certification Application.

C. Re-certifications

For firms that are certified by the Authority and found eligible under 49 CFR Part 26, the Authority reviews the firm every three (3) years for re-certification. At the time of re-certification, firms will be required to submit the following:

- Social/Economic Disadvantage Affidavit
- No-Change Affidavit (Affidavit of Certification)
- Personal Net Worth
- Personal/Business Tax Returns

In addition to the required submissions, the Authority will conduct an on-site review of the prospective firm.

The Authority requires that on an annual basis DBE firms submit the following information for annual renewals:

- Social/Economic Disadvantage Affidavit
- No-Change Affidavit (Affidavit of Certification)
- Personal Net Worth
- Personal/Business Tax Returns

D. "No Change" Affidavits and Notices of Change (Affidavit of Certification)

The Authority requires all DBEs to inform the Authority, 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 application for certification.

The Authority also requires all owners of all certified DBE firms submit, on the anniversary date of their certification, a "No Change" affidavit (affidavit of certification) meeting the requirements of 26.83(j). A copy of the affidavit can be found in **Attachment H**.

The Authority requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

The Authority will notify all certified DBE firms of these obligations on an annual basis 30 days prior to the anniversary date. This notification will inform DBEs to submit the "No Change" affidavit, and owners must swear or affirm that they meet all regulatory requirements of 49 CFR 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 49 CFR Part 26

eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

E. Denials of Initial Requests for Certification

If the Authority denies a firm's application or decertifies it, the firm may not reapply until 12 months (one year) from the final denial decision that has passed from Authority action.

F. Removal of a DBE's Eligibility

In the event the Authority proposes to remove a DBE's certification, the Authority will follow procedures consistent with 49 CFR Part 26, Section 26.87. **Attachment G** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the Authority has determined that the Disadvantage Business Enterprise Liaison Officer, will serve as the decision-maker in de-certification proceedings. The Authority has established an administrative "firewall" to ensure that the DBELO will not have participated in any way in the de-certification proceeding against the firm.

G. Certification Appeals

Any firm or complainant may appeal the Authority's 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 Street, SW
Room 2104
Washington, D.C. 20590

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

The Authority has developed a process for all DBE firms who wish to file an appeal. The process is outlined in **Attachment I**.

Firms that wish to seek an appeal for certification do not have to exhaust the appeals process established by the Authority prior to contacting the Department of Transportation.

VII COMPLIANCE AND ENFORCEMENT

A. Information, Confidentiality, Cooperation

The Authority will safeguard from disclosure of information to third parties that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, the Authority 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.

B. Monitoring Payments to DBEs

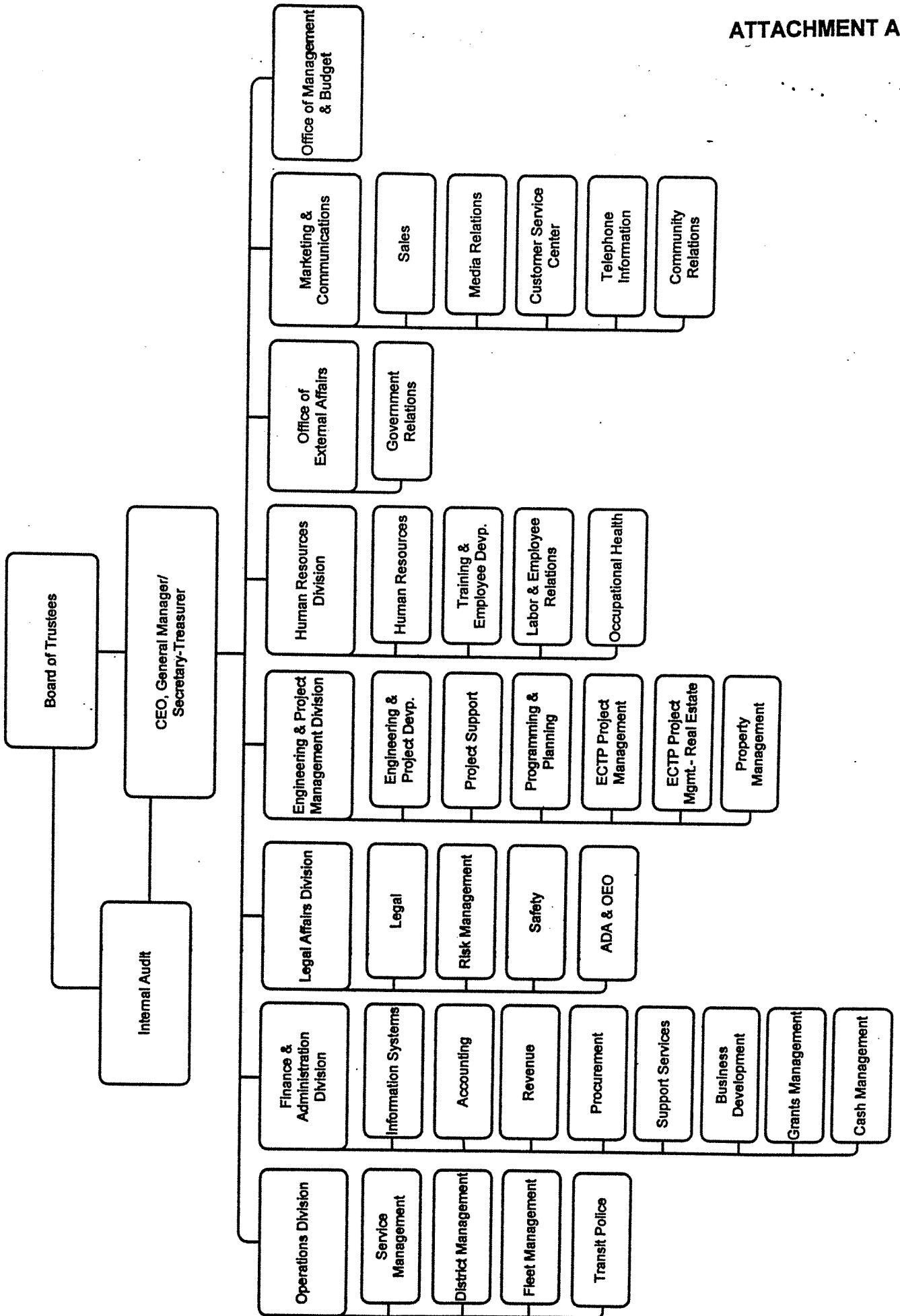
The Greater Cleveland Regional Transit Authority will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Authority or DOT. This also extends to any certified DBE subcontractor.

The Authority will perform interim audits of contract payments to DBEs. The auditor 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.

C. Regulations

The Authority has attached Federal Regulations 49 CFR Part 26 for reference. The Regulations can be found in **Attachment XI** of this program.

**GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY
ORGANIZATIONAL CHART AS OF APRIL 12, 2004**





Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

K-14

TITLE/DESCRIPTION: RECINDING RESOLUTION NO. 1999-115 AND ADOPTING A REVISED PROGRAM MANUAL FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION FOR FEDERALLY FUNDED CONTRACTS.	Resolution No.: 2004 - 124
	Date: September 16, 2004
	Initiator: Office of Business Development
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 PURPOSE/SCOPE: This action will allow the Authority to comply with the Federal Regulations of the U. S. Department of Transportation (49 CFR Part 26) and the Federal Transit Administration (FTA) which requires the Authority to update the Disadvantaged Business Enterprise (DBE) program manual when significant changes in the Authority's approved DBE Program occurs. The current manual on file with the FTA expires on September 30, 2004.

- 2.0 DESCRIPTION/JUSTIFICATION: The GCRTA Disadvantaged Business Enterprises program manual provides an overview of federal DBE program requirements and establishes GCRTA policy and guidelines for program compliance.

Disadvantaged Business Enterprises (including women-owned firms) have traditionally been underrepresented as owners and managers of businesses in this country, and as U.S. Department of Transportation assisted contractors. It is the policy of the U.S. Department of Transportation (DOT) and the Greater Cleveland Regional Transit Authority to encourage and increase DBE participation in contracts and programs funded by (DOT).

- 3.0 PROCUREMENT BACKGROUND: Does not apply.

- 4.0 AFFIRMATIVE ACTION/DBE BACKGROUND: This action supports the compliance with the U.S. Department of Transportation (49 CFR Part 26) Disadvantaged Business Enterprise (DBE) Program Regulations.

- 5.0 POLICY IMPACT: This action updates the Authority's policy with regards to the DBE program.

- 6.0 ECONOMIC IMPACT: This action supports the continuation of the Greater Cleveland Regional Transit Authority's eligibility for federal financial assistance. The Federal Transit Administration provides grants in support of the Greater Cleveland Regional Transit Authority's capital program.

- 7.0 ALTERNATIVES: Do not approve this resolution. This would not allow GCRTA to comply with the federal regulations requiring program updates as significant changes occur. This would not be in compliance with the federal regulations and jeopardize federal funding.

- 8.0 RECOMMENDATION: It is recommended that the Board approve a revised Disadvantaged Business Enterprise Program Manual.

K-15

9.0 ATTACHMENTS: None.

Recommended and certified as appropriate to the availability of funds,
legal form and conformance with the Procurement requirements.



CEO/General Manager/Secretary-Treasurer