

Allen County Regional Transit Authority DBE PROGRAM

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The *Allen County Regional Transit Authority*, (ACRTA)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 ACRTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the ACRTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the ACRTA 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Teresa Kayser is delegated as the DBE Liaison Officer. In that capacity Teresa Kayser, Administrative Assistant, 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 ACRTA in its financial assistance agreements with the Department of Transportation.

ACRTA has disseminated this policy statement to the Allen County Regional Transit Authority's Board of Trustees and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The local newspaper was used to notify all business of the ACRTA's DBE goals.



Signature of Executive Director

April 15, 2010
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The ACRTA is the recipient of federal –aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The ACRTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The ACRTA will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The ACRTA 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 ACRTA 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.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

ACRTA – We will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The ACRTA 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 calculating overall goals. The bidder 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:

A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts; a recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

Allen County Regional Transit Authority (ACRTA) 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 ACRTA 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 ACRTA of its failure to carry out its approved program, the Department may impose sanction 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.*).

This language will appear in financial assistance agreements with sub-recipients.

A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts; a recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.

Contract Assurance: 26.13b

We 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 remedy as the recipient deems appropriate.

[Note: This language is to be used verbatim, as it is stated in 26.13(b)]

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the ACRTA has received a grant of \$250,000 or more in FTA planning capital, and/ or operating assistance in a federal fiscal year, we 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.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Teresa Kayser, Administrative Assistant to the Executive Director, of Allen County Regional Transit Authority, 200 East High Street, Lima, Ohio 45801, phone: 419-222-5745, fax: 419-224-0989, email: teresa@acrta.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the ACRTA complies with all provision of 49 CFR Part 26. The DBELO is the Administrative Assistant of the Executive Director of ACRTA concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 1 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 *one* to assist in the administration of the program. The 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 attainment) and identifies ways to improve progress.
6. Analyzes ACRTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Ohio.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the ACRTA's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the ACRTA 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. We have made the following efforts to identify and use such institutions: Using the Ohio Department of

Transportation web site, ACRTA did not find any DBE Financial Institutions in the Allen County Area.

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

Section 26.29 Prompt Payment Mechanisms

The ACRTA 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 3 days from the receipt of each payment the prime contract receives from ACRTA. The prime contractor agrees further to return retainage payments to each subcontractor within three days after the subcontractors' 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 ACRTA.

Section 26.31 Directory

The Allen County Regional Transit Authority uses the Ohio UCP Directory as its DBE Directory. This Directory can be found at <https://www.ohioucp.org>.

Section 26.33 Overconcentration

ACRTA has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

ACRTA has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The ACRTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. 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.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 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.
3. We 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 direct observation.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

ACRTA does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 3 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the ACRTA will submit its overall goal to DOT by August 1 of each year. Before establishing the overall goal each year, ACRTA will consult with the Ohio Department of Transportation to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ACRTA efforts to establish a level playing field for the participation of DBEs.

[Note: The consultation will 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 goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at Allen County Regional Transit Authority's office 200 East High Street, 45801 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. ACRTA will use The Lima News to advertise our DBE program, also the DBE information will be on our web site for review. Normally, we will issue this notice by June 1 of each year. The notice will include the address of Allen County Regional Transit Authority (ACRTA) to which comments may be sent and web address where the DBE goals will 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. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.49 Transit Vehicle Manufacturers Goals

ACRTA 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. Alternatively, ACRTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

ACRTA will not use Race-Neutral and Race-Conscious participation.

Section 26.51(d-g) Contract Goals

The ACRTA will use contract goals to meet any portion of the overall goal ACRTA 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 Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

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 of good faith efforts are found in Appendix A to Part 26.

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 non-responsive, or responsive. Teresa Kayser is responsible for the good faith efforts of the bidder/offeror.

ACRTA 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.

Information to be submitted (26.53(b))

ACRTA 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/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within three days of being informed by ACRTA that it is not responsive 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: Gary Kitchin, ACRTA Executive Director, 200 East High Street, Lima, OH 45801; phone: 419-222-2782; email: garykitchin@acrta.com. 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 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 (26.53(f))

ACRTA 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.

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.

Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Allen County Regional Transit Authority (ACRTA) to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 1.9 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A to Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

ACRTA will use the UCP DBE Directory to determine if a firm qualifies as a DBE. Information on certification application forms and documentation requirements are found in Attachment 5 to this program. The Ohio UCP website also details the certification process.

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

Teresa Kayser, Administrative Assistant to the Executive Director, Allen County Regional Transit Authority, 200 East High Street, Lima, Ohio 45801; phone: 419-222-2782; or by e-mail: teresa@acrta.com

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

ACRTA is the member of a Unified Certification Program (UCP) administered by the state of Ohio. The UPC will meet all of the requirements of this section. The UPC that is used by ACRTA has a web site in which all eligible DBE are noted.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

The United Certification Program that the ACRTA is a member of performs all DBE certifications through a six-step process that is outlined on their web site.

Firms that have been certified as DBEs will be reviewed every three years by the UCP to determine their continued eligibility

“No Change” Affidavits and Notices of Change (26.83(j))

We require all DBEs 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 [*Recipients*] 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 test of this affidavit is the following:

I swear (or 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 ACRTA under 26.83(j). [*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. 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.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until six months have passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 6 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that Gary Kitchin, Executive Director of ACRTA, will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that Gary Kitchin will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 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 Street, SW
Room 2104
Washington, D.C. 20590

We 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).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose to third parties information 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, 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.

Monitoring Payments to DBEs

We 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 ACRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

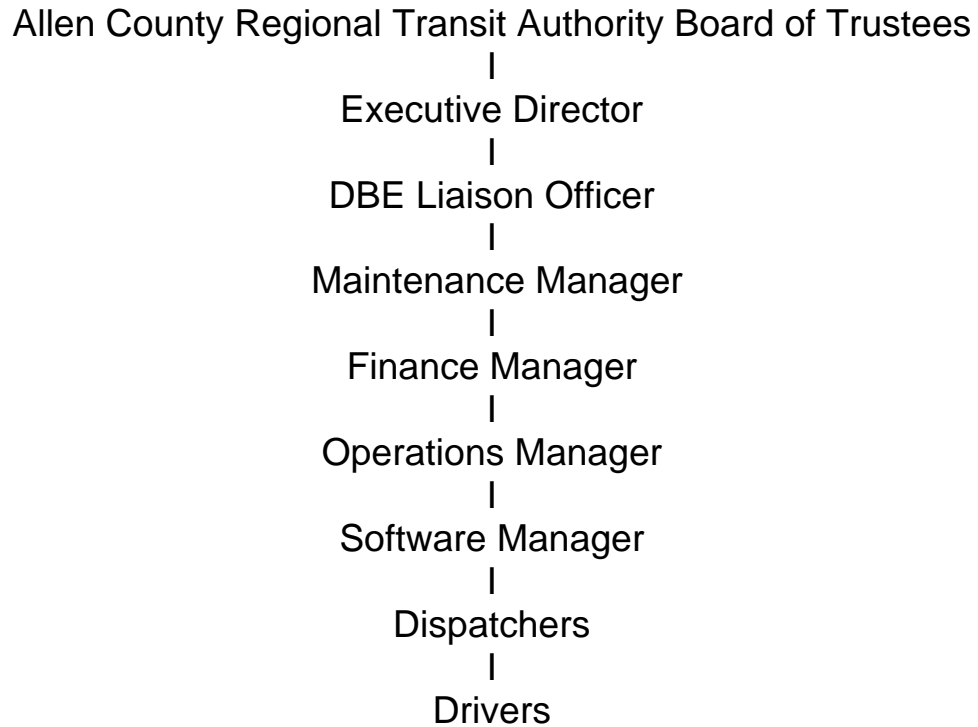
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Monitoring and Enforcement Mechanisms
Attachment 3	Overall Goal Calculation
Appendix A to Part 26	Examples of Good Faith Efforts
Attachment 4	Forms 1 & 2 for Demonstration of Good Faith Efforts
Attachment 5	Certification Application Forms
Attachment 6	Procedures for Removal of DBE's Eligibility
Attachment 7	DBE Advertising

ATTACHMENT 1

Organizational Chart



ATTACHMENT 2

Monitoring and Enforcement Mechanisms

The Transit Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Ohio Revised Code pertaining to DBE certifications
3. FTA 49 CFR part 26

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

ATTACHMENT 3

Section 26.45: Overall Goal Calculation

Amount of Goal

1. ACRTA's overall goal for FY 2010 is the following: 1.7% of the Federal Financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was: Ohio Department of Transportation DBE web site

The data source or demonstrable evidence used to derive the denominator was: All DBE firms in the state of Ohio.

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%.

The data used to determine the adjustment to the base figure was: based on past DBE participation.

The reason we chose to adjust our figure using this data was because: Adjustments could not be made due to the limited amount in DBE's in our area of the state of Ohio.

From this data, we have adjusted our base figure to: No Adjustments were made

Public Participation

We published our goal information in these publications: The Lima News and the ACRTA's web site: www.acrta.com

We received comments from these individuals or organizations: No comments were received.

APPENDIX A to PART 26

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/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.
 - 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.
 1. (1) Negotiating in good faith with interested DBEs. It is the bidder'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.
2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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.
 - E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 - G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - H. 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.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

ATTACHMENT 4

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title _____
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

.....
.....
.....
.....

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

ATTACHMENT 5

Certification Application Forms

ACRTA is the member of a Unified Certification Program (UCP) administered by Ohio Department of Transit. The UPC will meet all of the requirements of this section. The following is a description of the UCP. The Ohio Department of Transit has a web site with all DBE eligible companies listed.

Applications can be viewed at the Ohio Department of Transportation website:

<https://www.ohioucp.org>

Ohio UCP Resources		
Ohio UCP		
Form	Certification Application	UCP_Application.pdf
Form	Certification Application Instructions	UCP_ApplicationInstructions.pdf
Form	Annual Affidavit Update	UCP_AnnualAffidavit.pdf
DBE Programs		
Form	Training Reimbursement Application	DBE_Supportive_Services_App_Reimbursement.pdf
Other Resource Links		
U.S. DOT	http://osdbuweb.dot.gov/business/dbe/index.html	This site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information (49 CFR Part 26)
SBA	http://www.ntis.gov/naics	Provides a listing of NAICS codes
SBA	http://www.sba.gov/size/indextableofsize.html	Provides a listing of NAICS codes with corresponding Size Standards
DBE Program Information		
<p>The DBE program is a federal program operating under the guidance of the United States Department of Transportation. Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26). All recipients of federal transportation funds, must comply with the requirements of 49 CFR 26. You may review 49 CFR Part 26 at: http://osdbuweb.dot.gov/business/dbe/index.html.</p> <p>The DBE program regulations were updated effective February 9, 1999 to include a provision requiring a Unified Certification Program (UCP) to established within three years. The UCP will provide one-stop shopping for DBE firms. One unified directory including all certified DBE firms will be available for the entire State of Ohio. The main advantages for the DBE firms are: one certification will enable them to be eligible to fulfill DBE goals set on any project with any governmental agency receiving Federal Transportation funding in Ohio; and the DBE firms will also have more visibility due to the unified state-wide directory.</p> <p>The overall goal of the DBE program is to ensure that firms owned and controlled by minorities, women, and</p>		

other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient in order to create a level playing field on which they can compete fairly for contracts and subcontracts in the transportation industry.

The benefits of DBE certification are:

- Eligible for contract awards
- Ongoing training opportunities
- Availability of both technical- and business-related supportive services

To qualify for certification as a DBE, an applicant must meet the following eligibility standards established in the federal regulations at 49 CFR Part 26 and 13 CFR Part 121.

Small Business Concern

A firm and its affiliates must meet applicable size standards established by the U.S. Small Business Administration (SBA) regulations at 13 CFR Part 121, as amended, for each work classification in which certification is requested.

No business shall be considered small if average annual gross receipts of the firm and its affiliates exceed \$20.41 million over the previous three fiscal years, even though receipts do not exceed the threshold for the applicable NAICS/SIC code. This maximum size standard is adjusted periodically to offset inflation.

Social and Economic Disadvantage Status

By definition, socially and economically disadvantaged individuals are those citizens of the United States, or lawfully admitted permanent residents, who:

- Have an individual personal net worth, excluding the value of their primary residence and assets of the firm applying for DBE certification, of less than \$750 thousand; and,
- Are women or members of minority groups designated in 49 CFR §§ 26.5 and 26.67, including individuals who are Black Americans, Hispanic, Asian Pacific, Asian Indian, or Native American; or,
- Are individuals who, although not a woman or a member of one of the designated minority groups, establish social and economic disadvantage based on guidelines established in Appendix E to 49 CFR Part 26.

Ownership

Disadvantaged individuals must own at least 51 percent of the firm (or stock). The contributions of capital or expertise used to acquire ownership must be "real and substantial" and derived from individually and independently owned resources. Ownership interest obtained through a transfer or gift will be scrutinized to ensure the ownership transfer is irrevocable, was acquired for reasons other than obtaining certification as a DBE, and that the disadvantaged owner(s) actually controls the management, policy, and operations of the firm.

Control

Control is comprised of three parts: operational control, managerial control, and independence. The socially and economically disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's overall operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

Additionally, a firm must be independent, its viability must not depend on its relationship with another firm or firms. In order to be viewed as controlling a firm, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm.

ATTACHMENT 6

Procedures for Removal of DBE's Eligibility

- a. *Ineligibility complaints.*
 1. Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
 2. You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
 3. If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- b. *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- c. *DOT directive to initiate proceeding.*
 1. If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
 2. The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
 3. You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.
- d. *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
 1. In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
 2. You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original

- record of the hearing. You may charge the firm only for the cost of copying the record.
3. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
- e. *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
1. Your method of implementing this requirement must be made part of your DBE program.
 2. The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
 3. Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.
- f. *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:
1. Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
 2. Information or evidence not available to you at the time the firm was certified;
 3. Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
 4. A change in the certification standards or requirements of the Department since you certified the firm; or
 5. A documented finding that your determination to certify the firm was factually erroneous.
- g. *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.
- h. *Status of firm during proceeding.*
1. (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.
 2. The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.
- i. *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:
1. When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.
 2. If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to

the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

3. *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.
- j. *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under 26.89.

From: Gary Kieble [gk@kieslin@cedata.com]
 Sent: Monday, February 1, 2010 8:55 AM

Ter Shultz

Subject: LineItemDBE2010.xls

Alcon County Regional Transit Authority
 DBE Goals Report For FY 2010

Type 1: Construction
Type 2: Professional Services
Type 3: Materials & Supplies, Equipment
Type 4: Other

Operating exp	AMOUNT	TYPE	CONSTRUCTION	PROF SERVICES	MATERIALS SUP	OTHER
Labor	\$ 586,680.96	4	X	X	X	\$ 586,680.96
Frippers	\$ 183,874.26	4	X	X	X	\$ 183,874.26
Professional Fees	\$ 59,840.00	2	X	X	X	X
Advertising	\$ 5,100.00	2	X	X	X	X
Managerial Fees	\$ 119,032.00	2	X	X	X	X
Contract Maintenance	\$ 17,376.00	2	X	X	X	X
Custodial Service	\$ 41,804.00	2	X	X	X	X
Audit/Accounting	\$ 12,980.00	2	X	X	X	X
Legal Service	\$ 2,520.00	2	X	X	X	X
Board Members	\$ 2,160.00	2	X	X	X	X
Printing	\$ 600.00	2	X	X	X	X
Phys/Drugs Services	\$ 1,320.00	2	X	X	X	X
Fuel/Lube	\$ 126,642.00	3	X	X	X	X
Tires/Tubes	\$ 3,480.00	3	X	X	X	X
Other Materials & Supplies	\$ 49,055.04	3	X	X	X	X
Oil Fees	\$ 44,311.02	4	X	X	X	X
Insurance	\$ 69,172.98	4	X	X	X	\$ 69,172.98
Travel	\$ 4,980.00	4	X	X	X	\$ 4,980.00
Maintenance Miscel	\$ 4,420.00	3	X	X	X	X
Operating Misc	\$ 11,740.00	3	X	X	X	X
Admin Misc	\$ 10,688.95	3	X	X	X	X
Depreciating exp	\$ 1,389,719.20		X	X	X	\$ 1,389,719.20
Capital Expense	\$ 262,884.00	1				
Bus Procurement	\$ -					
Comp Software	\$ 439,500.00					
Capital Const	\$ 271,556.00					
Total	\$ 673,888.00					

DBE Total \$ 419,602.96

Determined on or Operating & Cap ex Expenses & Contract Opportunities

Total Oper	\$ 1,389,719.20
Exp	\$ 602,453.00
Total	\$ 673,888.00
Capital Exp	\$ 673,888.00

CONTRACTS	
PTAs	\$ 602,453.00
	\$ 673,888.00

Attachment 7**NOTICE OF DISADVANTAGE BUSINESS ENTERPRISES
(DBE)**

March 1, 2010

The Allen County Regional Transit Authority, of Lima Ohio hereby announces its Disadvantage Business Enterprise (DBE) participation goals for fiscal year 2009. The overall goal of DBE participation in contracting opportunities is 1.9%. The goals information on the Allen County Regional Transit Authority's DBE program and a listing of contracting opportunities are available for public review at the address listed below, between the hours of 8:30 am and 4:30 pm on business days. Comments regarding the goals and the DBE program will be accepted for a period of forty-five days following the publication of this notice. Interested persons and qualified DBE firms should contact: Gary Kitchin Executive Director, Allen County Regional Transit Authority, 200 East High Street, Lima, Ohio 45801 or by phone 419-222-2782.