

POLICY

Policy Name	Resolution Number	Origin Date	Approval Date
DBE	17-07-09	6/20/2019	

NOTE: The Delaware County Transit Board (DCTB) is the governing body of Delaware County's Public Transit System established by the Delaware County Commissioners under the authority of Ohio Revised Code section 306.01 and 306.02. The Delaware Area Transit Agency (DATA) is the common name given to the public transit system. This policy is established and set forth under the authority of the Delaware County Transit Board. DATA and DCTB may be used interchangeably in this policy or used separately to distinguish responsibilities.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Delaware County Transit Board (BOARD) 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 BOARD has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the BOARD has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the BOARD to ensure that DBEs, defined in part 26, have an equal opportunity to receive and participate in DOT assisted contracts. It is also our 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;
- And to assist the development of firms that can compete successfully in the market place outside the DBE Program.

The BOARD Facilities, Assets and Technology Manager has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the Facilities, Assets and Technology Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is afforded the same priority as compliance with all other legal obligations incurred by the BOARD in its financial assistance agreements with the Department of Transportation.

The BOARD has disseminated this policy statement to the members of the BOARD, the Transit Director and its administrative staff and all offices and departments of the organization. The BOARD will distribute this statement to DBE and non-DBE business communities that may perform work for us on DOT-assisted contracts.

All existing contractors shall receive a copy of this policy. All announcements of future contract opportunities shall include a statement of this DBE policy.

Denny Schooley, Executive Director

Date

DELAWARE COUNTY TRANSIT BOARD

POLICY

CFR 49 Part 26

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 BOARD is the recipient of federal transit funds authorized by 49 USC Section 5307, Section 5339, and Section 5340.

The BOARD is the recipient of federal transit funds authorized by "State of Good Repair."

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

The BOARD 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 BOARD 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)

The BOARD will report DBE participation to the Federal Transit Administration (FTA) as follows:

The BOARD will report DBE participation on a semi-annual basis, (by June 1st and December 1st) in TrAMS using DOT-OSDBU Form "Uniform Report of DBE Awards or Commitments and Payment." These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

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For State of Good Repair project where the Ohio Department of Transportation (ODOT) is the federal grantee, DATA will provide DBE reporting to ODOT on a semi-annual basis on May 1 and November 1.

Bidders List: 26.11(c)

The BOARD 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 bidder's 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.

The BOARD will collect this information in the following ways:

- The BOARD will require all prime bidders to report the names, addresses and DBE non-DBE status of all firms who quote them on subcontracts.
- The BOARD will also include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the BOARD DBELO.

Analysis of Overall DBE Goals and Uniform Report

(Part 26.47). If the awards and commitments shown on BOARDS's Uniform Report at the end of any fiscal year are less than the overall DBE goal for that fiscal year, The BOARD will analyze in detail the reasons for the difference. After completing this analysis, specific steps and milestones will be established to correct the problems identified in the analysis in order to enable The BOARD to fully meet its overall DBE goal in the new fiscal year. This analysis is performed at the end of each fiscal year, if needed, even though the overall DBE goal has been developed to cover three fiscal years. The BOARD will retain the analysis and corrective actions in its files for three years. This information will be made available to the FTA if requested.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

The BOARD shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to The BOARD of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate

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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.

Contract Assurance: 26.13b

The BOARD 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the BOARD has received a grant \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, The BOARD will continue to carry out this program until all funds from DOT financial assistance have been expended. The BOARD will provide to FTA, 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)

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

Ed Pierson, Facilities, Assets and Technology Manager
Delaware County Transit Board

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119 Henderson Ct
Delaware, OH, 43015
(740) 363-3355

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that The BOARD complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the BOARD concerning DBE program matters. An organization chart displaying the DBELO 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 one part time staff member to assist in the administration of the program. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Work with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- 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).
- Analyzes the BOARD's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the BOARD on DBE matters and achievement.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the BOARD 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 if the need should arise, and to encourage prime contractors on DOT assisted contract to make use of these institutions.

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The BOARD has made the following efforts to identify and use such institution. The web site is www.federalreserve.gov/releases/mob/

To date, there are no such institutions listed for the State of Ohio. Information on the availability of such institutions in the future can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

The BOARD 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 thirty days from the receipt of each payment the prime contract receives from BOARD. The prime contractor agrees further to return retainage payments to each subcontractor within thirty 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 BOARD. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

The Ohio Department of Transportation (ODOT) maintains a directory identifying all firms eligible to participate as DBEs in Ohio. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The BOARD makes the Directory available as follows:

<https://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>

Interested parties can obtain access to the directory through the website. The BOARD participates in a combined statewide directory through the Ohio Department of Transportation via the website indicated above.

Section 26.33 Overconcentration

The BOARD has not identified that over concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The BOARD has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

The BOARD 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.

The BOARD will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

The BOARD will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs through on-site inspections during activities.

The BOARD will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The BOARD will require contractors to submit regular reports of the actual payments made to DBE companies for work committed to them at the time of contract award. DBE participation will only be credited to an overall or contract goal when payments are actually made to DBE companies.

Section 26.39 Fostering Small Business Participation

Whenever the BOARD utilizes Federal funding it will make every attempt to foster small business participation for contracts and/or purchase orders.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The BOARD 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 2 to this program.

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In accordance with Section 26.45(f) the BOARD will submit its overall goal to the FTA on or before August 1st of each year. Before establishing the overall goal each year, the BOARD will consult with , the U.S. Census Bureau at their website <http://www.census.gov> and the U.S. Department of Commerce, Economic Development Administration to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the BOARD's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the BOARD 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 the BOARD office for 30 days following the date of the notice, and informing the public that the BOARD and the Federal Transit Administration will accept comments on the goals for 45 days from the date of the notice. Normally, the BOARD will issue this notice by August 1 of each year. The notice will include addresses to which

Comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to the FTA, will include a summary of information and comments received during this public participation process and our responses.

The BOARD will begin using our overall goal on October 1 of each year, unless the BOARD has received other instructions from the FTA. If the BOARD establishes a goal on a project basis, it will begin using that goal by the time of the first solicitation for a DOT-assisted contract for the project.

The BOARD will utilize various means of communication to reach out to disadvantaged businesses within the community. Communication will include: advertisement, phone conversations, websites and/or social media outlets, etc. Whenever the BOARD holds Public Hearings, the agenda will include a time allotment for DBE discussion.

Section 26.49 Transit Vehicle Manufacturers Goals

The BOARD will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurement, to certify that it has complied with the requirements of this section. Alternately, the BOARD 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

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The breakout of estimated race-neutral participation can be found in Attachment 3 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The BOARD will use contract goals to meet any portion of the overall goal the BOARD 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.

The BOARD will establish contract goals only on those DOT assisted contracts that have subcontracting possibilities. The BOARD needs 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.) The BOARD will express the 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 DBELO of the BOARD is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

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

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Each solicitation for which a contract goal has been established will require the bidders/offerors 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.

Administrative reconsideration (26.53(d))

Within five (5) business days of being informed by 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: The BOARD Chair, 119 Henderson Ct, Delaware, Ohio 43015, Phone (740) 368-9383. 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 BOARD's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The BOARD 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))

The BOARD 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 BOARD 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.

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In this situation, the BOARD 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.

Sample 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 BOARD 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 6.9 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), 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
- (6) If the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

The BOARD 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

The BOARD will refer firms to the State UCP agency.

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

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/default.aspx>

or the:

Ohio Department of Transportation
Office of Contracts, DBE Section
1980 West Broad Street, 1st Floor
Columbus, Ohio 43223
(614) 728-9598
(614) 728-2078 (fax)

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The BOARD participates in the Uniform Certification Program (UCP) administered by the ODOT, Office of contracts. The UCP will meet all of the requirements of this section.

Please contact:

Ohio Department of Transportation
Office of Contracts, DBE Section
1980 West Broad Street, 1st Floor
Columbus, Ohio 43223
(614) 728-9598
(614) 728-2078 (fax)

SUBPART F - COMPLIANCE AND ENFORCEMENT

Monitoring Payments to DBEs

The BOARD will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. The prime contractor will make these records available for inspection upon request to any authorized representative of the BOARD or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The BOARD 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.

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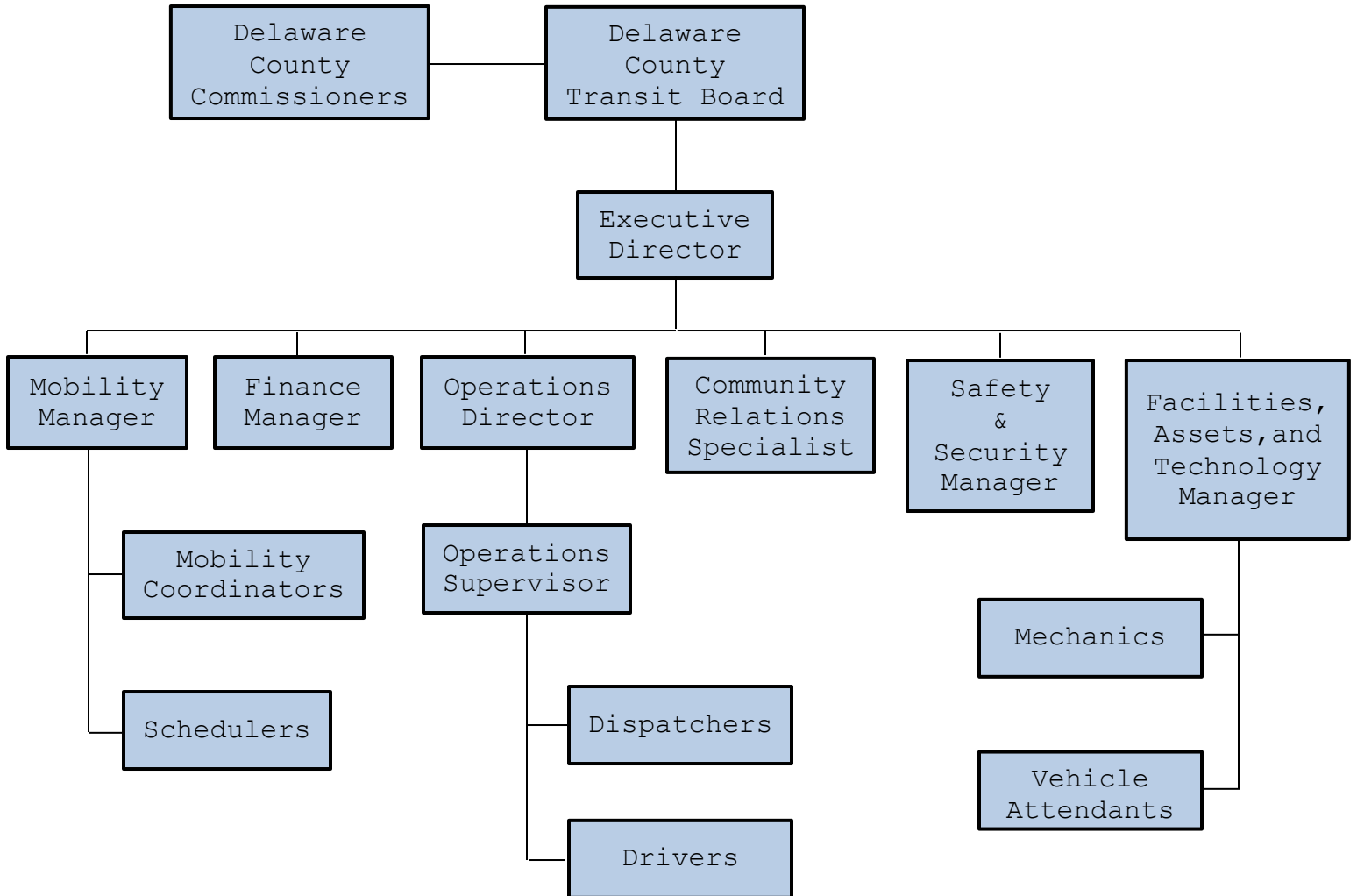
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Attachment 1 Organizational Chart



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Attachment 2

Section 26.45: Overall Goal Calculation

Amount of Goal

1. The BOARD's overall goal for the following time period FFY 2020 through FFY 2022 is the following: 0.83% of the Federal financial assistance the BOARD will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$530,609 is the dollar amount of DOT assisted contracts that the BOARD expects to award during FFY 2020 through FFY 2022. This means that the BOARD has set a goal of expending \$4,404.00 (.83%) with DBEs during FFY 2020 through FFY 2022.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

In order to establish the DBE goals required for the DOT grant, the following methodology was used. A local determination was made concerning where perspective contractors would be located that would bid on the federally assisted BOARD contracts. The following counties were selected as the base area for the contractors:

- Delaware County*
- Franklin County

* Denotes THE BOARD's service area

This geographic region was deemed to be appropriate for the BOARD contracting opportunities as based upon the history of goods and services purchased, that the businesses NAICS Sectors offering the types of goods and services noted below are provided the most favorable opportunity to participate in future federal-assisted contracts:

- 23 - Construction
- 42 – Wholesale Trade
- 44 – Retail Trade
- 54 – Professional, Scientific, and Technology Services

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For the purpose of this exercise, funds made available through the State of Good Repair discretionary funds and Section 5307 comprise the majority of the funds considered for DBE participation.

The base figure for the relative availability of DBE's was calculated as follows. The first step was to review the list of certified Disadvantaged Business Enterprise Contractors (Federal) that are listed on the website of the Ohio Department of Transportation's Unified Certification Program. Reviewing the listing for North American Industry Classification System (NAICS) codes noted above for certified DBEs, a total of one hundred forty six (146) companies were listed for the two counties referenced above.

With this information, the next process was to search the U.S. Census website for the County Business Patterns. Information was downloaded for the NAICS codes listed above. There were 1,809 businesses listed for all four codes in Delaware County and 10,361 businesses listed for all four codes in Franklin County for a total of 12,029 businesses for all four codes in both counties. This is the likely base from which our bidders would be located.

$$\frac{146 \text{ DBEs}}{12,170 \text{ DBEs and Non-DBEs}} = 0.83 \text{ percent}$$

When the BOARD divided the numerator by the denominator, (146 DBEs identified and 12,170 total business enterprises identified,) the goal for DBE participation would be .83%.

Step 2: 26.45(d)

The BOARD wanted to reflect as accurately as possible the DBE participation that the BOARD would expect in the absence of discrimination. Due to the low minority population, the relatively small number of women owned businesses in the two county area, the BOARD believes the DBE calculation shown above is a fair estimate of the DBE participation it may realize in FFY 2020 though FFY 2022.

Therefore, BOARD is comfortable using the DBE goal of .83% as established by the above referenced methodology.

Public Participation

The BOARD recognizes the importance of public participation in the DBE goal establishment process as required by 49 CFR 26.45 (g) (1). The BOARD will publish the preliminary DBE goal in newspapers in Delaware County as well as on its website. The

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goal will be made available for public inspection at the BOARD office during normal business hours for a 45-day comment period.

The BOARD will publish our goal information in all advertisements pertaining to its bidding process in awarding the contracts. It will be specifically included in the bid documents.

Those companies identified as DBEs will be formally notified of the bidding process when the nature of the bids is pertinent to their industry. Their names will be included with the information provided to bidders as a part of the bid package.

The BOARD will publish a notice as required upon receiving approval of this plan by FTA.

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Attachment 3

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The BOARD will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The BOARD uses the following race-neutral means to increase DBE participation.

- Encourage prime contractors to subcontract portions of work that they might otherwise perform with their own forces.
- Provide technical assistance services to DBE contractors whenever possible.
- Communicate DBE contractor availability in the bid specifications and solicitations by name and address.
- Ensure distribution of The BOARD's DBE directory to the widest feasible universe of potential prime contractors.

The BOARD estimates that, in meeting our overall goal of 0.1%, the BOARD will obtain 100% from race-neutral participation and 0% from race-conscious participation.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if the BOARD uses contract goals, the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) will be adjusted and the BOARD will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The BOARD will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

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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 .10 % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of .10%) 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 _____
(Signature) (Title)

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 \$ _____.

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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.)

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Attachment 5 Certification Application Forms

http://www.dot.state.oh.us/contract/PDF/UCP_FinalApplication.pdf

CERTIFICATION OF ELIGIBILITY UNDER THE BOARD DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

I, _____, in my capacity as described below, do hereby certify as follows:

I am the duly elected and qualified to execute and deliver this Certification in such capacity for _____ of _____ and:

The Company is an applicant to BOARD, pursuant to the DBE Program; and

On behalf of the Company, I have reviewed the DBE Policy adopted by BOARD pursuant to the DBE Program; and

I hereby certify that each owner of the Company whose ownership and control are relied upon for DBE eligibility is socially and economically disadvantaged, as defined in Section VI, Part D (a) of the DBE Policy, a copy of which is attached as Exhibit A.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate to the County of _____, BOARD, effective as of the ____ day of _____, _____.

COMPANY: _____

BY: _____

TITLE: _____

STATE OF _____)

COUNTY OF _____) SS

DELAWARE COUNTY TRANSIT BOARD

On this _____ day of _____, 20__, before me appeared _____, who, being sworn, acknowledged that the signature appearing above is the free act and deed of said person.

Notary Public

DELAWARE COUNTY TRANSIT BOARD

Attachment 6 Procedures for Removal of DBE's Eligibility

Ineligibility complaints

Any person may file with the BOARD, a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. 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.

The BOARD will review its records concerning the firm, any material provided by the firm and the complainant, and any other available information. Additional information may be requested by the BOARD from the firm.

If the BOARD determines, based upon its review, that there is reasonable cause to believe that the firm is ineligible, the BOARD shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination.

If the BOARD determines that such reasonable cause does not exist, it shall 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.

Recipient-initiated proceedings

If, based on notification by the firm of a change in its circumstances or through other information that becomes available, the BOARD determines that there is reasonable cause to believe that a currently certified firm is ineligible, the BOARD shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive to initiate proceeding

If the concerned operating administration determines that information in the certification records of the BOARD, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm the BOARD certified does not meet the eligibility criteria of this part, the concerned operating

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administration may direct the BOARD to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide to the BOARD and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

The BOARD must immediately commence and prosecute a proceeding to remove eligibility as provided in the Recipient-initiated proceeding section above.

When the BOARD notifies a firm that there is reasonable cause to remove its eligibility, the BOARD 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. In such a proceeding, the BOARD bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

The BOARD 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, the BOARD must provide a transcript of the hearing to DOT and, on request, to the firm. The BOARD must retain the original record of the hearing and may charge the firm only for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the BOARD shall 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.

Separation of functions

The BOARD 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.

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Grounds for decision

The BOARD shall 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. The BOARD may base such a decision only on one or more of the following:

- 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;
- Information or evidence not available to the BOARD at the time the firm was certified;
- Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- A change in the certification standards or requirements of the Department since you certified the firm; or
- A documented finding that your determination to certify the firm was factually erroneous.

Notice of decision

Following the decision, the BOARD shall 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 the decision of the BOARD and of the availability of an appeal to the Department of Transportation. The BOARD shall 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.

If the BOARD decertifies a DBE firm that is certified by the Small Business Administration (SBA), the BOARD shall notify the SBA in writing. The notification must include the reason for denial.

Status of firm during proceeding

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility by the BOARD. The firm does not become ineligible until the issuance of the notice provided for above.

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Effects of removal of eligibility

When the BOARD removes a firm's eligibility, the BOARD shall take the following action:

- When a prime contractor has made a commitment to using the ineligible firm, or the BOARD has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the ineligible firm does not count toward the contract goal or overall goal. The BOARD shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- If a prime contractor has executed a subcontract with the firm before the BOARD has 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 the BOARD lets a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of its ineligibility is issued shall not count toward the overall goal, but may count toward the contract goal.
- Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the BOARD may continue to count its participation on that contract toward overall and contract goals.

Availability of appeal

When the BOARD makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department of Transportation under §26.89. [64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

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Attachment 7 Regulations: 49 CFR Part 26

To ensure the most recent code of federal regulation, please paste or follow the link below:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?region=DIV1;type=boolean;c=ecfr;cc=ecfr;sid=14e071f96d5d61cb9d2410ed56c59d3d;q1=dbe;rgn1=Section%20Heading;op2=and;rgn2=Section;op3=and;rgn3=Section;view=text;idno=49;node=49%3A1.0.1.1.20;rgn=div5>

POLICY REVISION DATES

- Resolution xx-xx-xx