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Disadvantaged Business Enterprise (DBE) Program
Allen County Regional Transit Authority (ACRTA)

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DBE POLICY STATEMENT

The 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.

Tier 1 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. These firms are listed on the State of Ohio Uniform Certification Program website (<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>);
5. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The ACRTA Finance Manager has been delegated as the DBE Liaison Officer. In that capacity, the Finance Manager 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 ACRTA 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 by including this policy statement in all ACRTA solicitations.

ACRTA Executive Director

Date

STANDARD CONTRACT ASSURANCES

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 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 [Recipient] 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:

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 by including a notice in all solicitations published on our website (www.acrta.com) and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient through the vendor registration portal on our website (www.acrta.com)

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):

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 sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)

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

Contract Assurance: 26.13(b):

ACRTA 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, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the contractor from future bidding as non-responsible.

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)

ACRTA has designated the following individual as the DBE Liaison Officer:

Teresa Brown, Finance Manager
teresa@acrta.com
200 E. High St.
Lima, OH 45801

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 has direct, independent access to the Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The 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 Executive Director and Board of Trustees 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. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. 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 list provided here <https://fiscal.treasury.gov/mbdp/participants.html>, a search was done for the states of Ohio, Kentucky and Indiana.

To date we have not identified any such institutions located in the state of Ohio, Kentucky or Indiana that could adequately meet our needs.

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

Section 26.29 Prompt Payment Mechanisms

ACRTA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR § 26.29, ACRTA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from ACRTA.

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 thirty (30) days from the receipt of each payment the prime contractor receives from ACRTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of ACRTA. This clause applies to both DBE and non-DBE subcontractors.

This clause may include appropriate penalties for failure to comply, the terms and conditions of which will be set by ACRTA.

ACRTA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, ACRTA has selected the following method to comply with this requirement:

1. ACRTA may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors;
2. ACRTA may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed;
3. ACRTA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime

contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

ACRTA considers a subcontractor's work as satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by ACRTA. When ACRTA makes an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

ACRTA may also establish, as part of its DBE program, any of the following additional mechanisms to ensure prompt payment:

1. A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. ACRTA may specify the nature of such mechanisms.
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
3. Other mechanisms, consistent with this 49 CFR Part 26 and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

Prompt Payment Dispute Resolution

ACRTA will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of § 26.29:

Meetings between prime and sub, with resident project representative and/or project manager presence as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

1. Escalation steps should follow prime, ACRTA, and Operating Administration (OA) in that order.

2. If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
3. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by ACRTA to resolve prompt payment disputes, affected subcontractor may contact the responsible operating administration contact.

Enforcement Actions for Noncompliance of Participants

ACRTA will provide appropriate means to enforce the requirements of § 26.29. These means include:

1. In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
2. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
3. Pay subcontractors directly and deduct this amount from the retainage owed to the prime.
4. Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
5. Other penalties for failure to comply, up to and including contract termination.

ACRTA will actively implement the enforcement actions detailed above.

Section 26.31 Directory

The ACRTA participates in a combined statewide directory. The Uniform Certification Program <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>

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. Section 26.29 of this program elaborates on the regulation, 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.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Monitoring Work and Payments to DBEs

ACRTA undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the xx-day clock for payment.

ACRTA will conduct random site visits in order to certify to the Federal Transit Administration (FTA) that the DBEs are performing the work assigned to them.

ACRTA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the ACRTA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the ACRTA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

ACRTA proactively reviews contract payments to subcontractors including DBEs quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to ACRTA by the prime contractor.

Monitoring and Enforcement Mechanisms

ACRTA 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 the applicable sections of the Ohio Revised Code;
3. Other local, state and Federal laws, statutes, regulations, etc. that are available to enforce the DBE requirements;
4. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:
 - a) Suspension or debarment proceedings pursuant to 49 CFR Part 26
 - b) Enforcement action pursuant to 49 CFR Part 31
 - c) Prosecution pursuant to 18 USC 1001.

Section 26.39 Fostering Small Business Participation

Small business concerns are included in the ACRTA DBE program to ensure that all small businesses are allowed to participate in ACRTA's program (DBEs and non-DBEs alike) and, consequently, compete with similarly sized businesses.

A small business concern is defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

ACRTA will require verification of small business status to ensure a firm is in fact a small business concern. ACRTA may rely on the certification/verification processes used by another entity as long as the process is designed to confirm eligibility consistent with small business criteria consistent with those of Part 26. A certified DBE is presumed eligible to participate in a small business program developed to comply with 49 CFR §26.39, unless it is a micro-small business program. ACRTA will not permit firms to self-certify/verify as small businesses.

ACRTA shall take affirmative steps to establish maximum participation of small business vendors such as:

1. dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation,
2. establishing delivery schedules such that quantities ordered can be divided as needed to accommodate the capacity of small businesses,
3. on prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved, and
4. requiring the prime contractor, if subcontracts shall be let, to take the same affirmative steps as listed above in (1) through (3) of this paragraph.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The 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 B to this program. This section of the program will be updated every three years.

In accordance with Section 26.45(f) the ACRTA will submit its overall goal to DOT on August 1 at three-year intervals. Before establishing the overall goal, ACRTA will consult with (but not be limited to) women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ACRTA's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal on our website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, we will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year unless we have received other instructions from DOT. 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. Only those transit vehicle manufacturers listed on FTA's eligible TVMs list, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid. 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. ACRTA will review the list at [Eligible TVMs List](#) to confirm TVM's are eligible to participate on FTA-funded TVM procurements before making a TVM award and submit the required information on transit vehicle procurement awards online using the [Transit Vehicle Award Reporting Form](#) within 30 days after making a TVM award.

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

ACRTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The breakout of estimated race-neutral and race-conscious participation can be found in Attachment B to this program. This section of the program will be updated when the goal calculation is updated.

ACRTA uses the following race-neutral means to increase DBE participation:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

- Carrying out information and communications programs on specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids); and
- Any other approaches as appropriate.

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))

When a DBE contract goal has been established, the contract must be awarded only to the bidder/offeror that makes good faith efforts to meet it. It must be determined that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

1. Document that it has obtained enough certified DBE participation to meet the goal; or
2. Document that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough certified DBE participation to do so, prior to submittal of the bid or proposal. If the bidder/offeror does document adequate good faith efforts, the award

of the contract must not be denied on the basis that the bidder/offeror failed to meet the goals.

The DBELO or Procurement Specialist 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.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer'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.

In the solicitations for the DOT-assisted contracts for which a contract goal has been established, the following is required:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders/offerors will be required to submit the following information to ACRTA at the time specified in the solicitation:
 - a) The names and addresses of DBE firms that will participate in the contract;
 - b) A description of the work that each DBE will perform;
 - c) The dollar amount of the participation of each DBE firm participating;
 - d) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e) Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
 - f) If the contract goal is not met, evidence of good faith efforts.

At ACRTA's discretion, the bidder/offeror must present the information required above:

Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, prior to the time of contract negotiation procedures;

Or,

At any time ACRTA commits to the performance of the contract by the bidder/offeror, as a matter of responsibility.

Administrative reconsideration (26.53(d))

It must be determined that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing ACRTA to the performance of the contract by the bidder/offeror.

If it is determined that the apparent successful bidder/offeror has failed to meet the requirements of this section before awarding the contract, the bidder/offeror must be provided with the opportunity for administrative reconsideration.

Within 5 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:

Karen Garland, ACRTA Co-Director
karen@acrta.com
200 E. High St.
Lima, OH 45801

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

The bidder/offeror will have the opportunity to meet in person with the ACRTA reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. ACRTA 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. ACRTA 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, ACRTA will require the prime contractor to obtain ACRTA's 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.

ACRTA may establish a goal for the project in a “design-build” or “turnkey” contract situation, in which a master contract is let to a contractor, who in turn lets subsequent subcontracts for the work of the project. The master contractor then established contract goals, as appropriate, for the subcontracts it lets. ACRTA maintains oversight of the master contractor’s activities to ensure that they are conducted consistent with the requirements of this part.

ACRTA requires that a prime contractor may not terminate a participating DBE subcontractor without ACRTA’s prior written consent and then perform the work of the terminated subcontract with its own forces, or those of an affiliate, without prior written consent.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith effort to find another certified DBE to perform at least the same amount of work under the contract as the certified DBE had that was terminated, to the extent needed to meet the contract goal established for the procurement.

Each prime contract must include a provision for appropriate administrative remedies that will be invoked if the prime contractor fails to comply with the requirements of this section.

The requirements of this section must be applied to certified DBE bidders/offers for prime contracts. In determining whether a certified DBE bidder/offeror for a prime contract has met a contract goal, the work the certified DBE has committed to perform with its own forces, as well as the work that it has committed to be performed by certified DBE subcontractors and certified DBE suppliers, shall be considered.

Sample Bid Specification:

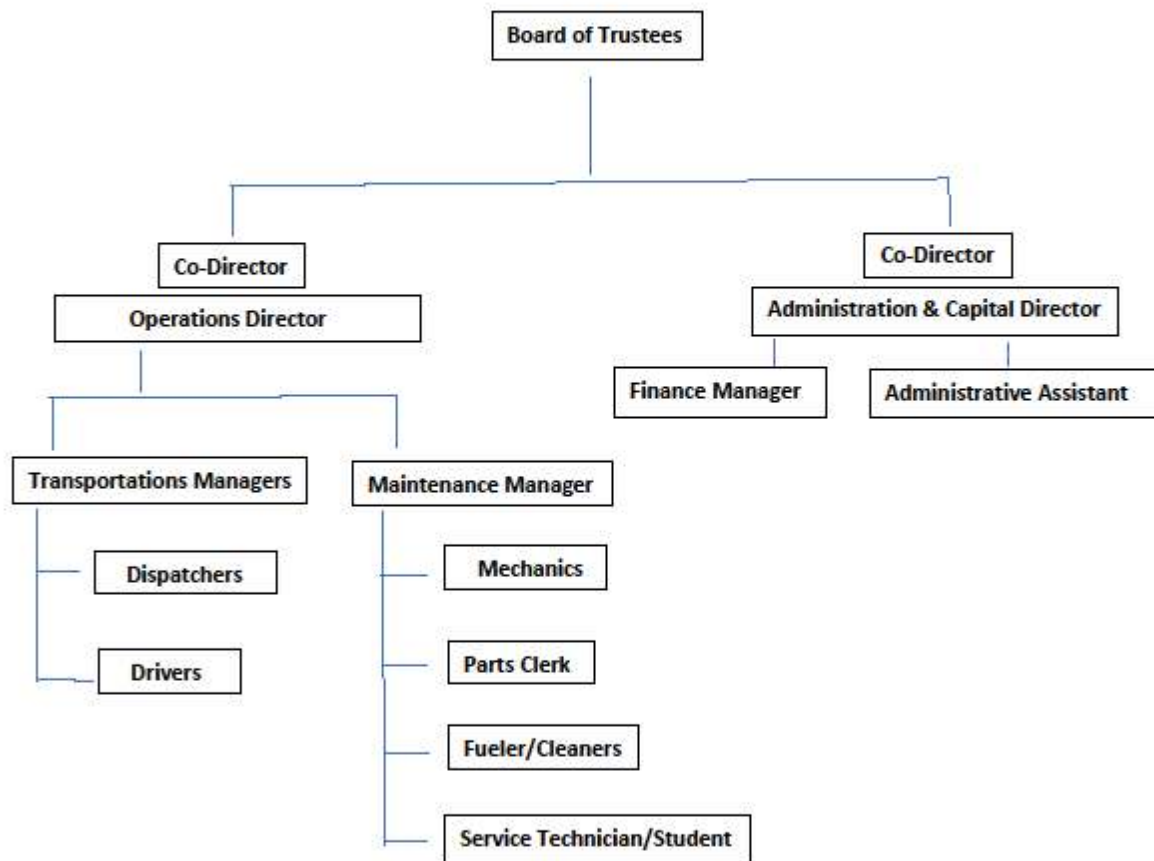
The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the ACRTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation 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/offers, including those who qualify as a DBE. A DBE contract goal of ____ 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 (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.

ATTACHMENT A – ORGANIZATIONAL CHART



ATTACHMENT B – GOAL SETTING

Overall Goal

The DBE Officer will annually review procurement plans and recommend appropriate organizational DBE contracting goals based on anticipated procurement actions and available certified DBE suppliers or contractors. DBE goals are established every three years based on projected expenditures for construction, professional services, materials and supplies, and equipment, and anticipated opportunities to use DBE vendors to fulfill those requirements. All received Federal financial assistance remitted to ACRTA by the City of Middletown for transit services are included in the projected expenditures.

ACRTA's overall goal for the following time period 2021-2023 is the following: .29% 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 for DBE- Goal Calculation

Step 1: Calculation

The overall-goal base figure for the FTA-assisted project will be calculated as follows:

$$\frac{\text{DBEs – Ready Willing \& Able}}{\text{All firms – Ready Willing \& Able}} = \text{DBE-Goal Percentage}$$

This figure is then weighted based on the contract dollars available for the type of work to be performed.

- Firms are selected using the NAICS codes associated with the targeted FTA funded project(s) we will be letting over the three-year term of this goal, e.g., for the construction of a vehicle storage facility, ACRTA will focus on firms with a NAICS code of 23xxxx – which includes all services and products associated with construction trades, projects, and products.
- **DBEs – Ready Willing & Able.** The data source or demonstrable evidence used to derive the numerator (Ready, Willing, and Able DBE Firms) will be all *active* DBE firms that were found in the Ohio Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) database (<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>) with the targeted NAICS code.
- **All Firms – Ready Willing & Able.** The data source or demonstrable evidence

used to derive the denominator will be the U.S. Census Bureau's County Business Patterns. The geographic area used for the Ready, Willing, and Able business count, for targeted NAICS firms will be the State of Ohio.

DBE Goal: .15%						
Anticipated Contract Opportunities	Projected FTA 2021-2023 Expenditures	Weight of Expenditures	# in DBE Directory	# in CBP	Computed Rate Weight x (DBE / CBP)	
Construction	700,000,000	1.9%	39	4,862	0.15%	
Manufacturing						
Wholesale Trade						
Retail Trade						
Transportation and Warehousing						
Information						
Professional, Scientific, and Tech Svc						
Adm & Support, Waste Mgmt & Remed						
Health Care and Social Assistance						
Other Services (Except Public Adm)						
	\$				DBE Goal = .15%	
Formula Results from the County Business Patterns and DBE Directory						
Ready, willing, and able DBEs			39			
All firms ready, willing, and able			4862		.15	

Step 2: Adjustment

After calculating the base figure of the relative availability of DBE firms, evidence will be examined to determine what adjustment to the base figure, if any, is appropriate in order to arrive at the overall goal. The evidence examined will include, but is not limited to, the current capacity of DBE firms to perform work on FTA assisted contracting programs; and evidence from related fields that affect the opportunities for DBE firms to form, grow, and compete.

It was determined that no further adjustment to the weighted Step 1 base figure was appropriate for the 2021-2023 overall goal.

Breakout of Race-Neutral and Race-Conscious Participation

100% race neutral means will be used. ACRTA will monitor DBE participation and include race-conscious means if it appears that its established goal will not be met during each applicable year.

Public Participation

In conformance with the requirement required by Section 26.45(g) that ACRTA will seek public participation in its goal setting process.

- ACRTA needs to utilize its new website for communication and vendor registration.
- ACRTA should use email to contact DBEs listed in the UCP.
- ACRTA needs to review procurements to better un-complicate or split out any sections that could be potential DBE opportunities.
- ACRTA will encourage all potential vendors (those that reach out through 'cold calls/emails' etc.) to register as vendors.
- We intend to use Ohio UCP to proactively reach out to DBEs and encourage them to register as a vendor with ACRTA, such that any procurements related to their NAICs code will be sent to them as well as other registered vendors.
- ACRTA will use its new website to post not only current procurements, but upcoming opportunities at various dollar amounts.

ACRTA published a notice announcing its proposed DBE goal for the respective fiscal years as required to the ACRTA website: www.acrta.com