

# FTA

## Southwest Ohio Regional Transportation Authority (SORTA)

Disadvantaged Business Enterprise (DBE) Program  
Compliance Review

Final Report  
July 2017



U.S. Department of Transportation  
Federal Transit Administration

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- A FTA Notification Letter to SORTA
- B SORTA Response
- C DBE Program Plan

## Executive Summary

### Objective and Methodology

This report details the findings of FTA's compliance review of the Southwest Ohio Regional Transportation Authority's (SORTA's) Disadvantaged Business Enterprise (DBE) program implementation. It examines SORTA's DBE program procedures, management structure, actions, and documentation.

On behalf of FTA's Office of Civil Rights, the Collaborative, Inc. of Boston, Massachusetts conducted the review in three stages:

1. Preparation: compilation of information covering policies, procedures and reported data
2. Site visit: observation of SORTA's DBE program files, contracts, and interviews
3. Analysis and reporting: identification of deficiencies requiring corrective actions and suggestions of effective practices in DBE programs

SORTA's DBE program includes the following positive program elements:

#### **Positive Program Elements**

- SORTA's Director of Diversity and Inclusion is well versed in the DBE program requirements and is implementing a number of important initiatives to increase DBE participation.
- The DBE Program Plan is comprehensive and well organized.

SORTA must address the following administrative deficiencies to comply with 49 CFR Part 26:

#### **Administrative Deficiencies**

- Not all of SORTA's RFPs with DBE participation goals consistently include the required DBE provisions.
- SORTA did not submit some Semi-Annual Uniform Reports by the required deadline.

SORTA must address the following substantive deficiencies to comply with 49 CFR Part 26:

#### **Substantive Deficiencies**

- SORTA's prior DBE goal calculation methodology and consultation process was not sufficiently documented.
- SORTA's ability to monitor subrecipient DBE compliance is not sufficiently established.

SORTA's DBE participation has decreased over the past three fiscal years to just 1.4 percent. According to SORTA's management, a number of factors contribute to its recent low DBE participation, including capital project delays, staffing shortages, and other budget issues. Notwithstanding, this report highlight several steps to help ensure the DBE program is implemented in good faith

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## 1 General Information

This chapter provides basic information concerning this compliance review of the Southwest Ohio Regional Transportation Authority (SORTA). Information on the grantee, the review team, and the dates of the review are presented below.

Grant Recipient:	Southwest Ohio Regional Transportation Authority (SORTA)
City/State:	Cincinnati, OH
Grantee Number:	2020
Executive Official:	Dwight Ferrell, CEO
On-site Liaison:	Demarcus Peters, Director of Diversity and Inclusion
Report Prepared By:	The Collaborative, Inc., Boston, MA
Dates of Site Visit:	February 28–March 2, 2017
Review Team Members:	William Schwartz, Z. Wayne Johnson

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## **2 Jurisdiction and Authorities**

The Federal Transit Administration (FTA) Office of Civil Rights is authorized by the Secretary of Transportation to conduct Civil Rights compliance reviews. The reviews are undertaken to ensure compliance of applicants, recipients, and subrecipients with Section 13 of the Master Agreement, Federal Transit Administration M.A. (21), October 1, 2014, and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs."

SORTA is the recipient of one or more Federal transit grants, loans, and/or contracts that exceed \$250,000. Hence, SORTA is subject to the Disadvantaged Business Enterprise (DBE) compliance conditions associated with the use of FTA financial assistance pursuant to 49 CFR Part 26. These regulations define the components that must be addressed and incorporated in SORTA's DBE program and were the basis for this compliance review.

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## 3 Purpose and Objectives

This chapter discusses the purpose and objectives of FTA's DBE compliance reviews and the review process.

### 3.1 Purpose

The FTA Office of Civil Rights periodically conducts discretionary reviews of grant recipients and subrecipients to determine whether they are honoring their commitment, as represented by certification to FTA, to comply with 49 CFR Part 26.

The primary purpose of the compliance review is to determine the extent SORTA has implemented 49 CFR Part 26 as represented in its DBE Program Plan. The compliance review is intended to be a fact-finding process to: (1) assess SORTA's DBE Program Plan and its implementation, (2) make recommendations regarding corrective actions deemed necessary and appropriate, and (3) provide technical assistance.

The compliance review is not solely designed to investigate whether there is discrimination against individual DBE firms or complainants or to adjudicate these issues on behalf of any party.

### 3.2 Objectives

The objectives of DOT's DBE regulations, as specified in 49 CFR Part 26, are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's transit financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that the Department's DBE program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet the regulatory eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Promote the use of DBEs on all types of Federally assisted contracts and procurement activities conducted by recipients.
- Assist with the development of firms that can compete successfully in the marketplace outside the DBE program.
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The objectives of this compliance review are to:

- Determine whether SORTA is honoring its commitment to comply with 49 CFR Part 26.
- Examine the required components of SORTA's DBE Program Plan against the compliance standards set forth in the regulations, DOT guidance, and FTA policies, and document the compliance status of each component.

Gather information and data regarding the operation of SORTA's DBE Program Plan from a variety of sources, including DBE program managers, other SORTA management personnel, DBEs, prime contractors, and other stakeholders.

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## 4 Background Information

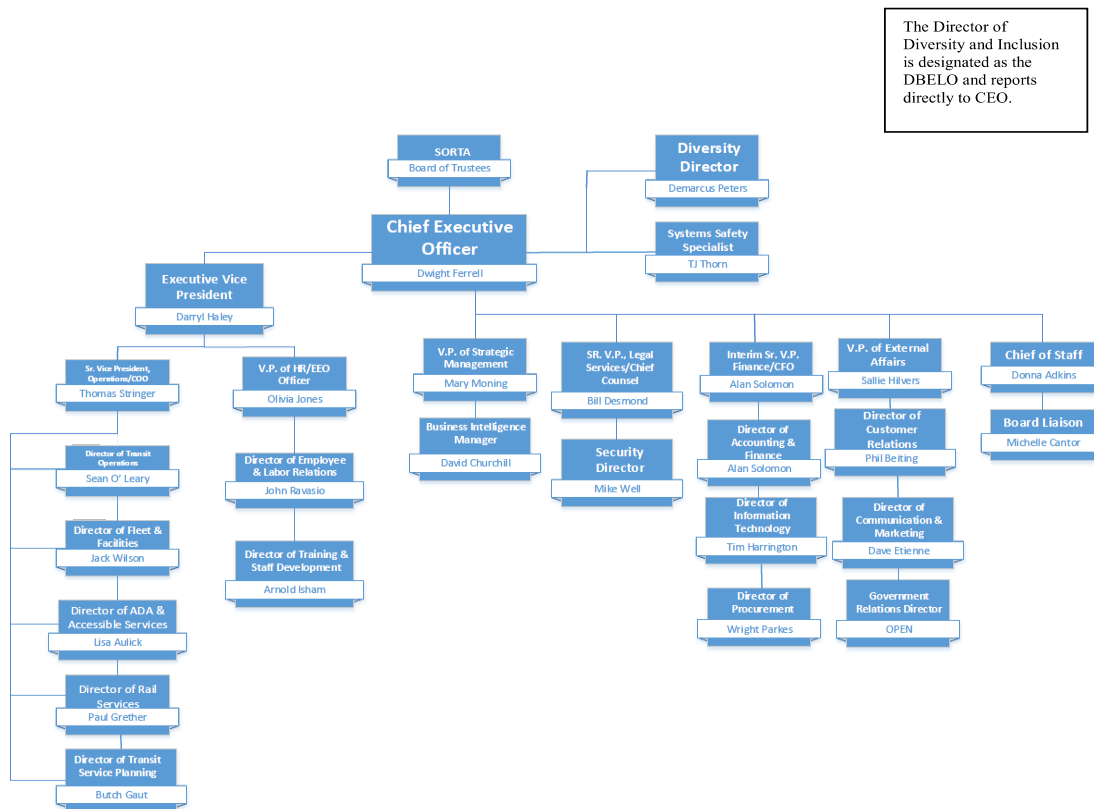
The purpose of this section is to provide an understanding of SORTA’s operations and scale. The section highlights SORTA’s services, FTA projects, and history of its DBE program.

### 4.1 Introduction to SORTA and Organizational Structure

Located in Cincinnati, OH, the Southwest Ohio Regional Transit Authority (SORTA), branded as “Metro,” serves Cincinnati and its Ohio suburbs. SORTA operates Metro fixed route bus service and the Cincinnati Streetcar, and contracts with MV Transportation to operate Access complementary paratransit service. SORTA has approximately 837 employees and operates 348 buses and 44 Access vehicles providing service on 26 local and 19 express routes. Fixed route ridership in 2016 was approximately 15 million and Access ridership was approximately 222,000. The Cincinnati Streetcar, which began service in September 2016, carried just under 37,000 riders in February 2017.

A Board of Trustees oversees SORTA, comprised of four charter members representing the Counties of Hamilton, Butler, Warren and Clermont, and nine at-large members allotted by jurisdiction based upon the jurisdiction’s funding contribution to SORTA.

Demarcus Peters, Director of Diversity and Inclusion, is the designated DBE Liaison Officer (DBELO) and is primarily responsible for all of SORTA’s DBE-related activities. See organization chart.



SORTA Organization Chart

## 4.2 Budget and FTA-Assisted Projects

SORTA's transit funding is from local, state, and Federal sources. In the FY 2013–2015 timeframe, SORTA received just under \$56.5 million in FTA funds, with approximately 51.6 percent for capital expenses, 48.4 percent for operating expenses, and 0.1 percent for planning. The \$56.6 million figure includes approximately \$1.5 million provided to the City of Cincinnati (subrecipient) for the recently opened \$148.1 million Cincinnati Streetcar project, which was constructed between 2012 and 2016. Total FTA funding for the Streetcar project was approximately \$25.3 million. Current projects include:

- Purchase and installation of automated passenger counters
- Owner's representative for three SORTA construction projects (Northside Transit Center, the Oakley Transit Center, and Walnut Hills bus stop improvements)
- Cincinnati Streetcar Operations and Maintenance

## 4.3 DBE Program

As discussed in Sections 6.8 (Determining/Meeting Goals) and 6.14 (Record Keeping and Enforcements), this review identifies a number of deficiencies with SORTA's DBE program. The recordkeeping deficiencies relate to the DBE participation for the Cincinnati Streetcar project. In early 2016, SORTA informed FTA that one of the Cincinnati Streetcar project subcontractors was no longer certified as a DBE for two of the three NAICS codes under which it was working. FTA recommended that SORTA not count any of the subcontractor's participation towards meeting its DBE goal and that SORTA provide any necessary shortfall analyses and corrective action plans to FTA.

SORTA hired Mr. Demarcus Peters as the Director of Diversity and Inclusion in 2016 to implement FTA's recommendations and revamp and oversee the DBE program. As discussed throughout this report, SORTA has a number of deficiencies to address and plans to do so in its forthcoming triennial goal submission, due on August 1, 2017.

Since joining SORTA, Mr. Peters diligently expanded SORTA's DBE program, addressing both internal agency concerns and broadening agency outreach. Internally, this included dedicating adequate staff to the DBE program and implementing other process improvements to procurement, budgeting, and recordkeeping. See Section 6.3. Externally, SORTA partnered with other transportation and community partners to encourage development and certification of more DBEs. This recently included hosting an eight-week US DOT Bonding Education Program (BEP) workshop. SORTA plans to use the findings of this review to correct any Cincinnati Streetcar DBE reporting errors and implement appropriate corrective actions. See Section 6.9.

## 5 Scope and Methodology

The purpose of this review is to provide FTA with a tool for determining whether a recipient of FTA funding is in compliance with the 49 CFR Part 26 DBE requirements. However, the deficiencies identified and findings made in this report are by necessity limited to the information available to and the observations made by the review team at the time of the site visit. A lack of findings in a particular review area does not constitute endorsement or approval of an entity's specific policies, procedures, or operations; instead, it simply indicates that no deficiencies were observed at the time of the review.

The scope of the review and the methodology employed by the review team are described in detail below.

### 5.1 Scope

Implementation of the following DBE program components specified by the FTA are reviewed in this report:

- A DBE program in conformance with 49 CFR Part 26 that has been submitted to FTA
- A signed policy statement expressing a commitment to SORTA's DBE program, states its objectives, and outlines responsibilities for implementation [49 CFR 26.23]
- Designation of a DBE liaison officer and support staff as necessary to administer the program, and a description of the authority, responsibility, and duties of the officer and the staff [49 CFR 26.25]
- Efforts made to use DBE financial institutions, by SORTA as well as prime contractors, if such institutions exist [49 CFR 26.27]
- A DBE directory including addresses, phone numbers and types of work performed made available to the public and updated at least annually [49 CFR 26.31]
- Determination that over-concentration does (not) exist and address this problem, if necessary [49 CFR 26.33]
- Assistance provided to DBEs through Business Development Programs to help them compete successfully outside of the DBE program [49 CFR 26.35]
- An overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts; and proper mechanisms to implement the DBE goal [49 CFR 26.43 – 26.53]
- A shortfall analysis and corrective action plan when SORTA did not achieve its DBE goal [49 CFR 26.47]
- A process that ensures transit vehicle manufacturers (TVMs) comply with the DBE requirements before bidding on FTA-assisted vehicle procurements. The process may include SORTA seeking FTA approval to establish a project specific goal for vehicle purchases. [49 CFR 26.49]
- Nondiscrimination and prompt payment clauses are included in all FTA-assisted contracts and a prompt payment verification process is in place. [49 CFR 26.7, 26.13, and 26.29]
- A certification process to determine whether potential DBE firms are socially and economically disadvantaged according to the regulatory requirements. The potential DBE firms must submit the standard DOT application, the standard DOT personal net worth form, along with the proper supporting documentation [49 CFR 26.65-26.71].
- The certification procedure includes document review, on-site visit(s), eligibility determinations consistent with Subpart D of the regulations, interstate certification review process, and a certification appeals process [49 CFR 26.83 and 26.86].
- Implementation of appropriate mechanisms to ensure compliance with the DBE requirements by all program participants and appropriate breach of contract remedies. [49 CFR Part 13]. The DBE

program must also include monitoring and enforcement mechanisms to ensure that work committed to DBEs at contract award is actually performed by DBEs [49 CFR Part 26.37]. Reporting must include information on payments made to DBE firms [49 CFR 26.11, 26.55].

## 5.2 Methodology

The FTA Office of Civil Rights sent a notification letter to Dwight Ferrell, SORTA CEO, on November 4, 2016, to confirm the timeframe for the review and ask for information within 21 days. (See Attachment A.)

Before the site visit, the review team examined the requested materials, as well as documents available from FTA's TrAMS website and other sources. These include:

- DBE Program Plan
- DBE goal methodology
- List of FTA-assisted contracts, including requests for proposals (RFPs)
- Transit vehicle procurements
- DBE certification documents and website
- Shortfall analysis
- Semi-annual Uniform Reports from TrAMS

At the beginning of the compliance review, FTA representatives, SORTA staff, and the review team conducted an opening conference with the following participants:

- Dwight Ferrell, Chief Executive Officer, SORTA
- David Riposo, Chief Financial Officer, SORTA
- Demarcus Peters, Director of Diversity and Inclusion, SORTA
- Janelle Hinton, DBE Program Coordinator, FTA Office of Civil Rights (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative

Following the opening conference, the review team examined SORTA's DBE Program Plan and other documents. They interviewed staff from the diversity, procurement, and finance offices regarding DBE program administration, DBE goal implementation, record keeping, monitoring, and enforcement. They also examined a sample of contracts for their DBE elements.

At the end of the site visit, FTA representatives, SORTA staff, and the review team convened for the exit conference to discuss initial findings and corrective actions. Participants included:

- Dwight Ferrell, Chief Executive Officer, SORTA
- David Riposo, Chief Financial Officer, SORTA
- Demarcus Peters, Director of Diversity and Inclusion, SORTA
- Marjorie Hughes, FTA Region V Civil Rights Officer (by telephone)
- William Schwartz, Review Team Leader, the Collaborative
- Z. Wayne Johnson, Review Team Member, the Collaborative

SORTA received a draft copy of the report to review and respond. See Attachment B for SORTA's response.



## 5.3 Stakeholder Interviews

The review team contacted several Ohio DOT certified DBEs that have worked for SORTA as a prime contractor, a DBE subcontractor, and supplier and firms that worked as a DBE subcontractor on the Cincinnati Streetcar project. Questions included:

- Have you worked on contracts as a Ohio-certified DBE?
- Any projects with SORTA?
- Has SORTA reached out to your company?
- How do you learn of DBE contracting opportunities with SORTA?
- Have you had any issues on yours (usage, payment, retainage, disputes, etc.)
- What was your experience like working on the Cincinnati Streetcar project? (if applicable)
- Have you had any issues with Ohio DOT's DBE certification process?

The firms working on SORTA projects described their experiences as positive. They also reported no issues with the Ohio-DOT DBE certification process.

The firms working on the Streetcar project said their work scopes matched expectations, including timely payments. Some, but not all of the firms, were aware of SORTA; none had any experience working on SORTA projects. They also reported no issues with the Ohio-DOT DBE certification process.

The review team also spoke with representatives of two organizations to discuss their interactions with SORTA on DBE and small business matters, asking:

- Are you aware of SORTA DBE program?
- Does SORTA reach out to you?
- Do you have any concerns?

Both representatives were familiar with Mr. Peters and with SORTA and described their working relationships as positive. Mr. Peters had reached out to them directly. They did not identify any concerns.

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## 6 Findings and Advisory Comments

This section details the findings for each area pertinent to the DBE regulations (49 CFR Part 26) outlined in the Scope and Methodology section above. For each area, an overview of the relevant regulations and a discussion of the regulations as they apply to SORTA's DBE program are provided below. Corrective actions and a timetable to correct deficiencies for each of the requirements and sub-requirements are also presented below.

Findings are expressed in terms of "deficiency" or "no deficiency." Findings of deficiency denote policies or practices that are contrary to the DBE regulations or matters for which FTA requires additional reporting to determine whether DBE compliance issues exist.

Findings of deficiency always require corrective action and/or additional reporting, and will always be expressed as:

- A statement concerning the policy or practice in question at the time of the review
- A statement concerning the DBE requirements being violated or potentially being violated
- A statement concerning the required corrective action to resolve the issue

Advisory comments are statements detailing recommended changes to existing policies or practices. The recommendations are designed to ensure effective DBE programmatic practices or otherwise assist the entity in achieving or maintaining compliance.

### 6.1 DBE Program Plan

**Basic Requirement (49 CFR Part 26.21):** Recipients must have a DBE program meeting the requirements of 49 CFR Part 26. The DBE Program Plan outlines the recipient's implementation of the DBE program. Recipients do not have to submit regular updates of DBE programs. However, significant changes in the program must be submitted for approval.

**Discussion:** During this compliance review, no deficiencies were found with SORTA's DBE Program Plan. SORTA submitted its DBE Program Plan as required on September 30, 2014 when Executive Vice President Mr. Darryl Haley was serving as Interim CEO and DBELO. Mr. Demarcus Peters joined SORTA in May 2016 and revised the DBE Program Plan, dated November 15, 2016. (See Attachment C.) SORTA uploaded this revised Plan to TrAMS on December 1, 2016. The Plan is well organized with extensive documentation that goes beyond simply stating the minimum requirements. For example, the DBELO section describes the staffing plan for the Office of Diversity and Inclusion and coordination with other agency staff units such as procurement and accounting. At the time of the site visit, several units had key vacancies that SORTA was working to fill. The Plan also includes a series of attachments and exhibits, which the review team consulted for completeness and accuracy. These are discussed in subsequent sections.

### 6.2 DBE Policy Statement

**Basic Requirement (49 CFR Part 26.23):** Recipients must formulate and distribute a signed and dated DBE policy, stating objectives and commitment to the DBE program. This policy must be circulated throughout the recipients' organization and to the DBE and non-DBE business communities.

**Discussion:** During this compliance review, no deficiencies were found with SORTA's DBE Policy Statement, which states:

The Southwest Ohio Regional Transit Authority (SORTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of

Transportation (USDOT) 49 CFR Part 26. SORTA has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, SORTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy and commitment of SORTA that disadvantaged businesses, as defined in 49 CFR Part 26, shall have a level playing field to participate in the performance of contracts financed, in whole or in part, with federal funds. It is also the policy of SORTA to:

- Ensure non-discrimination in the award and administration of USDOT assisted contracts;
- Create a level playing field on which DBE firms can compete fairly for USDOT-assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE firms;
- Assist in the removal of barriers to the participation of DBE firms in USDOT- assisted contracts; and
- Assist in the development of firms to enhance the ability to compete successfully in the marketplace outside of the DBE Program.

Further, SORTA is committed to providing small, minority, women and socio-economically disadvantaged businesses with access to training, technical assistance and business development activities to overcome prior discrimination. This is intended to expand the DBE business intelligence, knowledge of prevalent industry practices, as well as, the capability to access capital.

In compliance with Title CFR section 26.39, as an amendment to 49 CFR Part 26, Subpart B, SORTA has incorporated the following non-discriminatory element to its current DBE program to create a Small Business Enterprise (SBE) Program in which:

- SORTA creates a race-neutral SBE Program for SORTA federal-aid projects. Such a program is intended to foster small business participation and competition by small business concerns;
- The SBE program will not require SBE goal setting on SORTA federally aided projects; however, an SBE will be encouraged to participate and SBE participation will be tracked, monitored and reported; and

SORTA will advise each contractor, through contract specifications, that failure to carry out these requirements, shall constitute a breach of contract and may result in termination of the contract, or any such remedy that SORTA deems appropriate. SORTA will require all employees and agents to adhere to the provisions of 49 CFR Part 26.

As Chief Executive Officer and General Manager of SORTA, I have committed the support and resources needed to make this program a success for small, minority, women and social-economically disadvantaged businesses. It has the unwavering support of the Authority's Board of Directors, management staff, and employees in general.

Demarcus Peters, Director, Diversity and Inclusion, is designated as the DBE Liaison Officer (DBELO). In this capacity, Mr. Peters is responsible for oversight for 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 SORTA in its financial assistance agreements with the Department of Transportation.

SORTA has disseminated this policy statement to the Board of Directors and all 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. This statement is included in all solicitation packages and has been communicated to local business groups, chambers and community organizations.

For assistance or review of SORTA's Disadvantaged Enterprise Program or if you wish to file a complaint, you have a right to do so by contacting Demarcus L. Peters, J.D. Director, Diversity and Inclusion at 513-632-7614 or [dpeters@go-metro.com](mailto:dpeters@go-metro.com).

SORTA disseminates its Policy Statement to its Board of Directors and other organization members via bulletin boards, intranet, new hire packages, etc., as well as to DBE and non-DBE businesses that work for SORTA on DBE-assisted contracts. SORTA also includes the Policy Statement in its solicitation packages.

### 6.3 DBE Liaison Officer

**Basic Requirement (49 CFR Part 26.25):** Recipients must have a designated DBE Liaison Officer (DBELO) who has direct and independent access to the General Manager/CEO. This Liaison Officer is responsible for implementing all aspects of the DBE program and must have adequate staff to properly administer the program.

**Discussion:** During this compliance review, no deficiencies were found with these requirements. An advisory comment is made about providing the DBELO with additional staffing resources.

Mr. Demarcus Peters, Director of Diversity and Inclusion, is SORTA's DBELO. He has direct and independent access to the CEO.

According to the DBE Program Plan (pages 12–13):

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. Development of a budget for the implementation of coordinated program elements;
2. Staffing of DBE Program related projects;
3. Facilitating liaisons with the US Small Business Administration, SCORE, Small Business Transportation Resource Center, Ohio Minority Supplier Development Council, and other management and technical assistance groups to maximize assistance to DBEs; and
4. Identifying internal and external barriers to DBE participation and implementing strategies to overcome them.
5. Implementing new and innovative ways of facilitating DBE participation in non- traditional contracts.
6. Gathers and reports statistical data and other information as required by DOT.
7. Reviews third party contracts and purchase requisitions for compliance with this program.
8. Works with all departments to set overall annual goals.
9. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
10. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitor results.
11. Analyzes SORTA's progress toward attainment and identifies ways to improve progress.
12. Participates in pre-bid meetings.
13. Advises the CEO\governing body on DBE matters and achievement.
14. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
15. Plans and participates in DBE training seminars.

16. Provides outreach to DBEs and community organizations to advise them of opportunities.
17. Serve as a contact liaison to encourage eligible businesses to apply for certification with the Uniform Certification Program in Ohio.
18. Maintains SORTA's updated directory on small businesses.

Pages 13–14 of the DBE Program Plan also describe the Diversity and Inclusion Office staffing plan and coordination with other agency staff units such as procurement and accounting. At the time of the site visit, SORTA planned to hire a DBE Administrator; it has since filled that position, and the team is now complete. However, according to an earlier version of the DBE Program Plan, SORTA previously had a three-person DBE team. Given that the DBELO's responsibilities extend beyond the DBE program, additional staff may be required to fully support the program.

**Advisory Comment:** In order to oversee and implement a compliant DBE program, transit agencies must have adequate staff. Given the DBELO's other duties, SORTA should consider increasing the size of its DBE team.

## 6.4 DBE Financial Institutions

**Basic Requirement: (49 CFR 26.27)** Recipient must investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT- assisted contracts to make use of these institutions.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. An advisory comment is made regarding use of such institutions.

On Pages 15–16 of its DBE Program Plan, SORTA states:

It is the policy of SORTA to investigate the full extent of services offered by financial institutions and banks 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 efforts to identify such institutions. However, there are no minority financial institutions and banks within the community of Cincinnati, nor in the State of Ohio. Thus, we will encourage the use of minority financial institutions and banks within our DOT region and nearby. To date we have identified the following such institutions:

Metro Bank, Kentucky	First Independence Bank
American Metro Bank	Bay Bank
Illinois-Service FS&LA	Columbia Saving & Loans Assn
International BK of Chicago	North Milwaukee State Bank
Millennium Bank	Woodlands National Bank
Pacific Global Bank	Urban Partnership Bank
Seaway Bank& Trust Co	

A listing of said institutions, contact information, and the services they provide are afforded to firms under contract with the Authority for their reference.

Encouraging the use of minority financial institutions and banks extends to contractors located outside of the Cincinnati area. As a result, contractors are encouraged to be inclusive in their use of minority financial institutions and banks in their respective locales.

[The] DBLEO will also evaluate the availability of financial institutions every two (2) years.

The review team independently researched the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the SORTA region via the FDIC website

(<https://www.fdic.gov/regulations/resources/minority/MDI.html>) and did not identify any such banks within the State of Ohio.

**Advisory Comment:** Having identified financial institutions owned and controlled by socially and economically disadvantaged individuals within its DOT region, it is an effective practice for SORTA to consult with such institutions to establish direct banking relationships for the purpose of depositing Federal funds.

## 6.5 DBE Directory

**Basic Requirement (49 CFR Part 26.31):** A DBE directory must be available to interested parties, including addresses, phone numbers, and types of work each DBE is certified to perform. This directory must be updated at least annually and must be available to contractors and the public upon request.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. SORTA is a member of Ohio DOT's (ODOT) Uniform Certification Program (UCP). Its DBE Program Plan states:

SORTA uses the on-line directory from the State of Ohio, Department Of Transportation, DBE Unified Certification Program website, <https://www.ohiucp.org/index.vm>, to keep the most recent certification information. We make this directory available on our intranet for internal cost center managers to use, as well [on our website] for interested persons to find certified DBEs.

SORTA provided the review team a copy of a 2003 document from ODOT describing its UCP and listing SORTA as a member transit authority. US DOT approved this plan in 2005.

## 6.6 Overconcentration

**Basic Requirement (49 CFR Part 26.33):** The recipient must determine if DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, and then devise appropriate measures to address this overconcentration.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. On Page 18 of its DBE Program Plan, SORTA states:

SORTA has not identified that overconcentration exists in the types of work that DBEs perform. We will re-evaluate for overconcentration annually. If overconcentration is found in certain work areas to the point of unduly burdening non-DBEs working in those areas, SORTA will report such information and seek prior approval from FTA to develop appropriate corrective measures. Such measures may include:

- Developing ways to assist DBEs to move into nontraditional areas of work;
- Varying the use of DBE contract goals; and
- Working with contractors to find and use DBEs in other industry areas.

## 6.7 Business Development Programs

**Basic Requirement (49 CFR Part 26.35):** The recipient may or must (upon FTA's direction) establish a Business Development Program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. Although not specifically required to do so by FTA, SORTA has advanced a business development program, which it describes on pages 18–19 of its DBE Program Plan:

SORTA has developed a strategy to meet the standards of this part through strategic partnering with established business development programs. SORTA has established a strategic partnership with the U.S. Small Business Administration as evidenced by a Strategic Alliance Memorandum. In addition, SORTA is also promoting business development by creating partnerships with SCORE, Ohio Minority Business Assistance Centers, Small Business Transportation Resource Center, the Chambers of Commerce serving socially and economic businesses in the SORTA service area, and the Ohio Supplier Diversity Development Council.

Finally, SORTA will also engage in the following ways:

1. The Office of Diversity and Inclusion (ODI) will explain “How to do business with SORTA.”
2. ODI will conduct one-on-one technical assistance sessions and encourage submission of DBE certification applications to ODOT.
3. SORTA will participate in workshops, seminars, trade fairs, where discussions of historical barriers to DBE participation and ways to overcome those barriers are addressed. An example of such activity would be bringing DBEs and venture capitalist together in an open forum.
4. When a firm who plans to bid at another agency on a similar contract issued by SORTA, ODI will arrange with the procurement department for the firm to review the

## 6.8 Determining/Meeting Goals

### A) Calculation

**Basic Requirement (49 CFR Part 26.45):** To begin the goal-setting process, the recipient must first develop a base figure for the relative availability of DBEs. After the base figure is calculated, the recipient must examine all other available evidence to determine whether an adjustment is warranted. Adjustments are not required and should not be made without supporting evidence.

**Discussion:** During this compliance review, deficiencies were found with SORTA’s DBE goal calculation methodology associated with its current FY 2015–2017 DBE Program Plan. Pages 21–22 explain SORTA’s goal-setting process but provide insufficient justification or documentation for the resulting 18.23 percent goal, which is zero percent race neutral and 18.23 percent race conscious. See next subsection.

#### Section 26.45: Overall Goals

Before establishing the overall goal each year, SORTA will consult with the Ohio Supplier Development Council; U.S. census data; City of Cincinnati and its Disparity Study Data; the Ohio Department of Transportation and its 1) Ohio Uniform Certification Program DBE Directory and 2) Disparity Study Data; general contractors and peer agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs. In addition, SORTA’s efforts to establish a level playing field for the participation of DBEs will be considered. The consultation will include, but not necessarily be limited to, minority and women general contractor groups, community organizations, and other officials or organizations.

In accordance with Section 26.45, SORTA will submit its triennial, overall DBE goal to the FTA on August 1st of the year specified by the FTA for each three (3) year period (Federal fiscal years 2015 - 2017).

SORTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals, as directed by FTA. In accordance with Section 26.45, SORTA will submit its triennial, overall DBE goal to the FTA on August 1st of the year specified by the FTA for each three (3) year period (Federal fiscal years 2015 - 2017).



SORTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals, as directed by FTA.

**Methodology for Determining Goal(s)**

The process generally used by SORTA to establish overall DBE goals is as follows:

**Step 1**

1. Determine the number of ready, willing and able DBE’s in our market from the Ohio Uniform Certification Program DBE directory that perform work in the same NAICS codes.
2. Determine the number of ready, willing and able non-DBE’s in our market area from the Census Data. (Census Bureau County Business Patterns) that perform work in the same NAICS codes.
3. Determine the number of all ready, willing and able vendors in our market that perform work in the same NAICS codes.
4. The goal is established as the percentage of DBE’s available to the number of total vendors available. (Number of DBEs divided by number of all firms equals base figure for relative availability.)

**Step 2**

5. Examine any evidence in our jurisdiction to determine if any adjustment to the base figure is necessary.

SORTA may also use the most recent Ohio Public Authorities Disparity Study data for establishing overall and project goals.

In response to FTA pre-visit information request, SORTA provided the above information and a one-page table with its calculated 18.23 percent goal. (Note the table title is incorrectly labeled 2012–2014.):

**DRAFT DBE GOAL PROJECTION 2012-2014  
WCP - 7/7/11**

2015	PROJ. ID	DESCRIPTION	TOTAL AMOUNT	DBE %	DBE \$	COMMENTS
		1% 5307 security funds	\$ 131,295.00	2%	\$ 2,625.90	Assume some electrical work
		Buses	N/A	N/A	\$ -	No goal per FTA PROGRAM
		Construct Walnut Hills Transit Center	\$ 1,200,000.00	20%	\$ 240,000.00	Construction project, electrical, plumbing and general trades
		2015 TOTALS	\$ 1,331,295.00	18.22%	\$ 242,625.90	
2016	PROJ. ID	DESCRIPTION	TOTAL AMOUNT	DBE %	DBE \$	COMMENTS
		1% 5307 security funds	\$ 131,295.00	2%	\$ 2,625.90	Assume some construction or electrical work
		Buses	N/A	N/A	\$ -	No goal per FTA program
		Construct Northside Transit Center	\$ 2,412,000.00	20%	\$ 482,400.00	Construction project, electrical, plumbing and general trades
		2016 TOTALS	\$ 2,543,295.00	19.07%	\$ 485,025.90	
2017	PROJ. ID	DESCRIPTION	TOTAL AMOUNT	DBE %	DBE \$	COMMENTS
		Buses	N/A	N/A	\$ -	No goal per FTA program
		1% 5307 security funds	\$ 131,295.00	2%	\$ 2,625.90	Assume some construction or electrical work
		2017 TOTALS	\$ 131,295.00	2.00%	\$ 2,625.90	
		<b>THREE-YEAR TOTALS</b>	<b>\$ 4,005,885.00</b>	<b>18.23%</b>	<b>\$ 730,277.70</b>	

At the time of its goal submittal, SORTA anticipated implementing two transit center construction projects to which it applied a 20 percent DBE goal, but without any documented justification. SORTA applied a 2 percent DBE goal to 1 percent of its Section 5307 security funds. SORTA then used totals for the projects and funds and the calculated total DBE funds to produce the 18.23 percent three-year average. SORTA did

not explain this rationale in its goal submission, nor did it make any goal adjustments when the planned construction projects were delayed.

In discussions with SORTA staff during the site visit, SORTA managers stated the 18.23 percent goal was unachievable. SORTA's previous triennial goal was 12 percent based on a similar methodology of applying a 20 percent goal to larger construction projects and a 2 percent goal to the aforementioned security funds. The flaw in this method is evident when the spending is dominated by construction projects (90 percent of the total in the above table) and the projects are not advanced. SORTA managers stated they might recommend using the Ohio DOT's recently published disparity study findings to establish the upcoming triennial goal, likely to be 5-6 percent.

If SORTA continues to use the Step 1 and Step 2 processes to calculate its goal, it must compile the necessary information to properly calculate this goal and present the full analysis in its DBE Program Plan submission. This includes estimating certified DBE and non-DBE firms in its market area, including nearby Kentucky and Indiana, forecasting expenses, and if making any adjustments, documenting the basis for such adjustments. Regardless of the process adopted, future goal submissions require more detailed documentation.

**Corrective Actions and Schedule:** Because SORTA will be submitting its DBE goal for FTA review by August 1, 2017, SORTA must address this deficiency in its forthcoming submission by including the justification for its goal with sufficient documentation of the methodology used. SORTA must also broaden its market area analysis to include nearby Ohio-DOT certified DBEs located in nearby Kentucky and Indiana.

## **B) Public Participation**

**Basic Requirement (49 CFR Part 26.45):** In establishing an overall goal, the recipient must provide for public participation through consultation with minority, women, and contractor groups regarding efforts to establish a level playing field for the participation of DBEs. A notice announcing the overall goal must be published on the recipient's official website and may be published in other media outlets with an optional 30-day public comment period.

**Discussion:** During this compliance review, deficiencies were found with this requirement. As described on Page 21 of its DBE Program Plan:

SORTA publishes 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 our principal office located at 602 Main Street, Suite 1200, Cincinnati, OH 45202 for 30 days following the date of the notice, and informing the public that we will accept comments on the goals for 45 days from the date of the notice. Notices may be published on the SORTA website and/or Cincinnati Enquirer Newspaper, Passenger Transport, Cincinnati Herald, La Jornada Latina and the goal is also shared with the minority chambers in Cincinnati. In addition, where the opportunity is available, SORTA will discuss the overall goal on local radio shows. Normally, we will issue this notice by June 1 of each three (3) year period. The notices include the address to which comments may be sent and the address where the proposal may be reviewed.

SORTA provided copies of advertisements announcing its goal to the review team but could not provide any evidence of having held any workshops or consultation with minority, women, and contractor groups. SORTA does not have any record of feedback received on its proposed goal. SORTA acknowledged this deficiency. Mr. Peters has been diligently working on solidifying communication with the business community—confirmed in external stakeholder interviews—and said he will undertake more rigorous consultations for the upcoming triennial goal.

**Corrective Actions and Schedule:** Because SORTA will be submitting its DBE goal for FTA review by August 1, 2017, SORTA must undertake the required consultation and must document the results of the outreach both in the DBE Program Plan and in agency records.

## C) Race-Neutral DBE Participation

**Basic Requirement (49 CFR Part 26.51):** The recipient must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. As of 2011, the small business element described in 49 CFR 26.39 is a mandatory race-neutral measure. Additional examples of how to reach this goal amount are listed in the regulations.

**Discussion:** During this compliance review, deficiencies were found with SORTA's race-neutral DBE goal. Pages 23–24 of its DBE Program Plan present a well-organized discussion of the following application of its DBE goal policies:

### Race Neutral Measures

#### Projections of Race-Neutral vs. Race Conscious Goal Attainment

The regulations require that SORTA must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation.

SORTA will consider race neutral participation where DBEs and other small businesses benefit. Examples of race neutral participation is where a DBE serves as a prime, or DBE participation is obtained on non-goal contracts or DBE participation is obtained beyond the goal.

#### Race neutral measures to achieve participation

SORTA has established a Small Business Enterprise program as part of the larger DBE Program. SORTA will use its small business program to develop its race neutral goals through small business participation in contracts and procurements less than \$100,000. It includes contracting requirements that will assist small business competition, eliminate obstacles, and preclude unnecessary bundling of contract requirements. These measures are designed to promote small business participation as prime contractors or as subcontractors in compliance with 49 CFR Part 26.39.

To achieve the maximum feasible portion of the goal through remedies other than subcontracting goals, SORTA implements the following measures:

- Providing technical assistance and other services to increase the number of small business concerns competing in the transit industry;
- Providing assistance in overcoming limitations that prohibit participation in the industry, such as inability to obtain bonding, financing, etc.;
- Consult available directories and ensure that all known small businesses are notified of each procurement, whether or not a small business goal is established;
- Conduct vendor training events to encourage participation by small business concerns;
- Research to determine why such firms do not respond to solicitations; and
- Include wording in each solicitation encouraging the use of both DBEs and non-DBE small businesses on solicitations where no DBE goal is set.
- Circulating a pamphlet that discloses upcoming small business contracting opportunities and training opportunities;
- Referral to ODOT's supportive services program to develop and improve immediate and long-term business management skills, record keeping, and financial and accounting capabilities for small businesses;
- Ensuring print and electronic distribution of the small business directory upon request;
- Representatives from the Office of Diversity and Inclusion participating in small business contracting events.

- One-on-one technical assistance meetings have been held with small businesses, upon request. Topics of discussion include how to do business with SORTA.
- SORTA will work with technical schools or those with emphasis in technical certifications, including Cincinnati State in training persons to fill critical craft areas. (i.e. electricians) needed to support small businesses in the construction industry.
- Develop training opportunities in Contract Administration directed at SORTA team members to solicit the support of other staff in program areas to encourage small business participation when dealing with firms for contract services. Policy Statements will be reviewed, as well as processes. The difference between DBE Directory and Non-DBE, small business directories will be explained. Good faith efforts and the benefits that can be gained from the involvement of small businesses in the contract and procurement process will be discussed.
- Until additional baseline information is obtained, SORTA will meet its overall three year goal of [18.23%] for contracting opportunities in the following manner:
  - [0 %] by race neutral means
  - [18.23%] by race conscious means

SORTA is working to meet its DBE goal entirely by race conscious means as an interim measure while it addresses the DBE spending reporting errors associated with the Cincinnati Streetcar project. See Section 4.3. However, since SORTA has voluntarily implemented a small business element, this element of its program must be race neutral. SORTA acknowledged that the 18.23 percent goal was incorrect and that it had not adjusted the goal once the proposed transit center projects were delayed.

**Corrective Actions and Schedule:** Because SORTA will be submitting its DBE goal for FTA review by August 1, 2017, SORTA must work to meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. Since it has voluntarily implemented a small business element, this element of its program must be race neutral.

## D) Race-Conscious DBE Participation

**Basic Requirement (49 CFR Part 26.51):** The recipient must establish contract goals to meet any portion of the goal it does not project being able to meet using race-neutral measures.

**Discussion:** During this compliance review, deficiencies were found with this requirement. Page 26 of the DBE Program Plan states:

While the regulations require SORTA to meet the maximum feasible portion of its overall goal using a race-neutral means of facilitating DBE participation, SORTA does not project being able to meet the goal using race-neutral means. Therefore, SORTA will use contract goals to meet the overall goal. 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.

When contract goals are determined to be appropriate, they will only be established after benefiting from information gleaned during the following:

- A detailed examination of the technical requirements of the contract;
- The identification of DBEs that have the expertise and experience to serve as either a prime or subcontractor.
- Attending the preplanning meeting and reviewing the business plan as presented by the requesting department.

- Analyzing the Independent Cost Estimate (ICE) or cost breakdown for a project as obtained from the engineer or project manager;
- Discussion of project requirements and clarification of issues with a representative from the requester and/or the contracting officer;
- Reviewing similar contracts issued by SORTA and the types of services rendered by the DBEs;
- Determining the number of DBEs that are ready, willing and able within the geographic area from which bids might be received.

We will express our contract goals as a percentage of the total amount of DOT-assisted contracts (exclusive of transit vehicle manufacturers).

As noted in the previous subsection, SORTA's DBE Program Plan states, "Until additional baseline information is obtained, SORTA will meet its overall three year goal of [18.23%] for contracting opportunities in the following manner:

[0 %] by race neutral means

[18.23%] by race conscious means

SORTA is working to meet its DBE goal entirely by race conscious means as an interim measure while it addresses the DBE spending reporting errors associated with the Cincinnati Streetcar project. See Section 4.3. SORTA acknowledged that the 18.23 percent goal was incorrect and that it had not adjusted the goal once the proposed transit center projects were delayed.

**Corrective Actions and Schedule:** Because SORTA will be submitting its DBE goal for FTA review by August 1, 2017, SORTA must address this deficiency in its forthcoming submission. SORTA must meet the maximum feasible portion of the overall goal using race-neutral means of facilitating DBE participation. Since it has voluntarily implemented a small business element, this element of its program must be race neutral.

## **E) Good Faith Efforts**

**Basic Requirement (49 CFR Part 26.53):** The recipient may award contracts with DBE goals only to bidders who have either met the goals or conducted good faith efforts (GFE) to meet the goals. Bidders must submit the names and addresses of the DBE firms that will participate on the contract, a description of the work each DBE will perform, the dollar amount of DBE participation, written commitment to use the DBE submitted in response to the contract goal, written confirmation from each DBE listed, or GFEs as explained in Appendix A of 49 CFR Part 26. The bidders must submit documentation of these efforts as part of the initial bid proposal—as a matter of responsiveness; or no later than 7 days after bid opening—as a matter of responsibility. The recipient must review bids using either the responsiveness or responsibility approach and document which approach will be used in its DBE program plan.

**Discussion:** During this compliance review, a deficiency was found with this requirement.

Pages 26–28 of the DBE Program Plan outline SORTA's Good Faith Effort requirements and procedures, which are both compliant and thorough. Attachment 5 to the DBE Program Plan, which SORTA incorporates into its requests for proposals (RFPs), states:

In order to evaluate the extent of the meaningful Good Faith Efforts being submitted by a bidder/proposer in satisfaction of the contract requirements, the Authority requires that certain relevant information be provided prior to contract award. This information must be in the form of an affidavit and submitted by the prime contractor. A bidder/proponent must show reasonable good faith efforts to obtain DBE participation. SORTA treats bidder's/proponent's compliance with good faith efforts

requirements as a matter of responsibility. Such reasonable efforts may include, but are not limited to, some or all of the following:

- Utilization of the Ohio Unified Certification Program DBE Directory to identify currently certified DBEs: <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>
- Attendance at pre-bid/pre-proposal meetings, advertising and/or written notices;
- Follow-up of initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's are interested;
- Efforts to provide DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;
- Efforts made to select portions of the work (including, where appropriate, breaking down the contract into economically feasible units) proposed to be performed by DBE's in order to increase the likelihood of achieving the DBE goal;
- Efforts to negotiate with DBE's for specific sub-bids, including at a minimum; the names, addresses, and telephone numbers of DBE's that were contacted;
- A description of the information provided to DBE's regarding the plans and specifications for portions of the work to be performed and;
- A detailed statement of the reasons why additional prospective agreements with DBE's needed to meet the stated goals, were not reached.

#### Administrative Reconsideration

The bidder/proponent must make a written request for administrative reconsideration five (5) days prior to the award of the contract for lack of good faith efforts. That notice may be sent to:

c/o Mr. John Ravasio, Esq.  
602 Main Street, Suite 1200  
Cincinnati, OH 45202

The review team examined the following contract files to confirm SORTA applied its policies to each procurement:

- Uptown Transit Hub project
- Shelter installation
- Owner's representative
- Purchase and install automated passenger counters

All but the Uptown Transit Center contract included the GFE provisions.

**Corrective Actions and Schedule:** Within 60 days of receiving the final report, SORTA must ensure it has procedures in place to ensure its procurement documents include the required GFE provisions.

### F) Protecting Against Termination for Convenience

**Basic Requirements (49 CFR 26.53 and 26.13):** Recipients must implement mechanisms to ensure that prime contractors do not terminate DBE subcontractors for convenience (e.g., to perform work of the terminated subcontractor with its own forces or those of an affiliate, or reducing the scope of the DBE contract) without the recipient's prior written consent. Failure to obtain written consent is a material breach of contract.

**Discussion:** During this compliance review, deficiencies were found with this requirement.

Pages 28–30 of the DBE Program Plan outline SORTA's requirements to protect against termination for convenience. See Attachment C. These requirements follow the regulatory requirements but are not fully

incorporated into SORTA's contract files. The review team examined contract provisions that detail how SORTA may terminate contracts with prime contractors. A standard provision in one contract reads: "The contractor must receive the approval of SORTA's Procurement Office before terminating or making substitution for any subcontractors listed in its DBE plan." This is not consistent with the requirements listed in the DBE Program Plan for DBE notifications, good faith efforts to resolve the issue, and communications with the DBELO.

**Corrective Actions and Schedule:** Within 60 days of receiving the final report, SORTA must revise its standard contract provisions to incorporate its own requirements protecting against termination of convenience. SORTA must provide a copy of this document to the FTA Office of Civil Rights.

## G) Counting DBE Participation

**Basic Requirement (49 CFR Part 26.55):** The recipient must count only the value of work actually performed by the DBE when assessing the adequacy of DBE participation submitted in response to a contract. The recipient must review a bidder's submission to ensure the type and amount of participation is consistent with the items of work and quantities in the contract and that the bidders are only counting work performed by the DBE's own forces in accordance with the DBE requirements.

**Discussion:** During this compliance review, no deficiencies were found with SORTA's procedures for counting DBE participation. The contracts with DBE goals that the review team examined were new and did not yet have invoices, preventing verification of DBE participation. Earlier contracts the review team examined did not have DBE goals. Pages 31–34 of the DBE Program Plan (See Attachment C) describe SORTA's verification procedures, which are thorough and follow the requirements. SORTA expects to implement these procedures in its upcoming transit center construction projects and other instances calling for field verification of DBE participation.

## H) Quotas

**Basic Requirement (49 CFR Part 26.43):** The recipient is not permitted to use quotas. The recipient may not use set-aside contracts unless no other method could be reasonably expected to redress egregious instances of discrimination.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. Page 21 of the DBE Program states, "SORTA does not use quotas in any way in the administration of this DBE program." There is no indication SORTA establishes quotas for DBE participation.

## 6.9 Shortfall Analysis and Corrective Action Plan

**Basic Requirement (49 CFR Part 26.47):** The recipient must conduct a shortfall analysis and implement a corrective action plan in any fiscal year it does not meet its overall DBE goal.

**Discussion:** During this compliance review, deficiencies were found with SORTA's shortfall analysis and corrective action plan.

As shown in Table 6-1, SORTA achieved 100 percent DBE participation in FY 2014, but did not meet its 18.23 percent goal in FY 2015 or FY 2016. SORTA did not submit a shortfall analysis or corrective action plan for either year. SORTA's justification for not doing so is the change in DBE status for one of the Cincinnati Streetcar subcontractors. SORTA plans to prepare corrective action plans upon resolution of the payment analysis.

**Table 6-1 SORTA DBE Goal Attainment (FFY 2014–2016)**

FFY	Contracts Awarded	DBE Spending	Percent
2014	\$30,000	\$30,000	100.0%
2015	\$5,566,430	\$16,500	0.3%
2016	\$1,414,455	\$49,178	3.5%
<b>Total</b>	<b>\$7,010,875</b>	<b>\$95,678</b>	<b>1.4%</b>

**Corrective Actions and Schedule:** Within 60 days of receiving the final report, SORTA must submit shortfall analyses and corrective action plans for FY 2015 and FY 2016 via TrAMS.

## 6.10 Transit Vehicle Manufacturers (TVMs)

**Basic Requirement (49 CFR Part 26.49):** The recipient must require that each transit vehicle manufacturer (TVM) certify that it has complied with the regulations before accepting bids on FTA-assisted vehicle purchases. The recipient should not include vehicle procurements in its DBE goal calculations and must receive prior FTA approval before establishing project goals for vehicle purchases. The recipient is also required to submit, to FTA, the names of the successful TVM bidder and the amount of the vehicle procurement within 30 days of awarding a FTA-assisted vehicle contract.

**Discussion:** During this compliance review, a deficiency was found with this requirement.

Page 25 of SORTA’s DBE Program Plan states:

SORTA will require each transit vehicle manufacturer to do the following:

1. As a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, each transit vehicle manufacturer will certify that:
  - a. It has submitted the required annual percentage overall goal to FTA; and
  - b. FTA has either approved its annual percentage overall goal or has not disapproved the goal.
2. A distributor or dealer must provide a copy of documentation which verifies that the manufacturer has complied with the provisions of 49 CFR Part 26 for any vehicles the distributor or dealer seeks to provide.
3. SORTA has made these provisions in its bid specifications requiring the above from TVMs, distributors, or dealers, as a condition of permission to bid. (Exhibit F)

Alternatively, SORTA 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.

This language does not reflect the requirement to report the successful TVM bidder(s) and vehicle purchases to FTA within 30 days.

SORTA’s most recent fixed route bus purchases occurred before November 2014 through a transit agency consortium. At the time, SORTA verified the bus manufacturers had the proper DBE certifications. The review team examined the procurement files and confirmed the certifications. SORTA did not report these purchases to FTA, as it was not yet required to do so.

SORTA purchased paratransit vehicles through a State of Ohio contract. In such instances, transit agencies are required to report their use of the contract vehicle to the contract holder, who in turn must report the purchase to FTA.

**Corrective Actions and Schedule:** Within 60 days of receiving the final report, SORTA must revise its DBE Program Plan to reflect FTA’s requirements for reporting TVM procurements and incorporate a mechanism to communicate any purchases. If using a consortium or a state contract vehicle, this includes



reporting the purchases to the primary contractor holder with a reminder to report the purchases to FTA within 30 days.

## 6.11 Required Contract Provisions

### A) Contract Assurance

**Basic Requirement (49 CFR Part 26.13):** Each FTA-assisted contract signed with a prime contractor (and each subcontract the prime contractor signs with a subcontractor) must include a nondiscrimination clause detailed by the DBE regulations.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. SORTA's DBE Program Plan states:

SORTA 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.

All of the contract files the review team examined included this statement.

### B) Prompt Payment

**Basic Requirement (49 CFR Part 26.29):** The recipient must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance on their contracts no later than 30 days from receipt of each payment made by the recipient. This clause must also address prompt return of retainage payments from the prime to the subcontractor within 30 days after the subcontractors' work is satisfactorily completed. The recipient must provide appropriate means to enforce this requirement, which may include appropriate penalties for failure to comply.

**Discussion:** During this compliance review, no deficiencies were found with this requirement.

Pages 16–17 of the DBE Program Plan discuss prompt subcontractor payment, return of any retainage, and monitoring and enforcement mechanisms. These clauses were included in the contract files the review team examined. The monitoring and enforcement mechanisms are discussed in the attachments to the DBE Program Plan and describe SORTA's procedures to keep a running tally of payments to DBE firms. In addition, as part of its Small Business Element, SORTA is investigating an electronic reporting system to track subcontractor payments.

### C) Legal Remedies

**Basic Requirements (49 CFR Part 26.37):** Recipients must implement appropriate mechanisms to ensure compliance by all participants, applying legal and contract remedies under Federal, state, and local law. Breach of contract remedies should be used as appropriate.

**Discussion:** During this compliance review, no deficiencies were found with this requirement. Page 20 of the DBE Program Plan states:

[SORTA] 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 necessary 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.

[SORTA] will consider similar action under our own legal authority, including responsibility determinations in future contracts. Attachment B, SORTA's Solicitation Document and SORTA's General Terms and Conditions lists the regulations, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

The contracts and RFPs the review team examined also contain this language.

## 6.12 Certification Standards

**Basic Requirements (49 CFR Parts 26.67–26.71):** The recipient must have a certification process in place to determine whether a potential DBE firm is legitimately socially and economically disadvantaged according to the regulatory standards. The DBE applicant must submit the required DOT application and personal net worth (PNW) form with appropriate supporting documentation, as needed.

**Discussion:** This requirement is not applicable because SORTA does not process any DBE certifications, but instead relies on the ODOT UCP.

## 6.13 Certification Procedures

### A) Onsite Visits and Document Review

**Basic Requirement (49 CFR Part 26.83):** The recipient must determine the eligibility of firms as DBEs consistent with the standards of Subpart D of the regulations. The recipient's review must include performing an on-site visit and analyzing the proper documentation.

**Discussion:** This requirement is not applicable because SORTA does not process any DBE certifications, but instead relies on the ODOT UCP.

### B) Annual Affidavit

**Basic Requirement (49 CFR Part 83):** DBE firms must submit an annual affidavit affirming their DBE status. Recipients may not require DBE firms to reapply for certification or undergo a recertification process.

**Discussion:** This requirement is not applicable because SORTA does not process any DBE certifications, but instead relies on the ODOT UCP.

### C) Interstate Certification

**Basic Requirement (49 CFR 26.85):** The recipient may accept out-of-state certifications and certify DBE firms without further procedures. Otherwise, DBEs certified in one or more states and certifying entities should follow the procedure outlined in 49 CFR 26.85(c)-(g).

**Discussion:** This requirement is not applicable because SORTA does not process any DBE certifications, but instead relies on the ODOT UCP.

### D) Denials

**Basic Requirement (49 CFR 26.86):** The recipient must provide a written explanation for all DBE certification denials. The document must explain the reasons for the denial and specifically reference evidence in the record to support the denial. The recipient must allow the firm to reapply for certification within 12 months or less of the initial denial. The DBE firm may appeal the certification decision to the DOT.

**Discussion:** This requirement is not applicable because SORTA does not process any DBE certifications, but instead relies on the ODOT UCP.

## 6.14 Record Keeping and Enforcements

**Basic Requirements (49 CFR Parts 26.11 and 26.37):** The recipient must provide to FTA data about its DBE program on a regular basis. The recipient must submit Semi-Annual Uniform Reports on June 1st and December 1st of each fiscal year using the FTA Transit Award Management System (TrAMS) (formerly TEAM), unless otherwise notified by FTA. (State Departments of Transportation must also report the percentage of DBE minority women, non-minority women, and minority men to the DOT Office of Civil Rights by January 1st of each year.) In addition, the recipient must implement appropriate monitoring mechanisms to ensure overall compliance by all program participants. The monitoring and enforcement measures must be conducted in conjunction with monitoring contract performance for purposes such as close out reviews for contracts. Lastly, the recipient must maintain a bidders list complete with subcontractor firm names, addresses, DBE status, age of firm, and annual gross receipts of the firm.

**Discussion:** During this compliance review, several deficiencies were found with these requirements, as discussed in the following subsections.

### Semi-Annual Uniform Reporting

Table 6-2 summarizes the status and timeliness of SORTA's Semi-Annual Uniform Report submissions. As shown, SORTA did not submit the FY 2015 report due on 12/1/15 and submitted both of the 2016 reports after the deadline. SORTA attributed the late submissions to the ongoing Cincinnati Streetcar DBE payment issue.

**Table 6-2 SORTA DBE Goal (18.23 Percent) Attainment (FFY 2014–2016)**

FFY	June 1 Submittal	Comment	December 1 Submittal	Comment
2014	5/30/14	No contracts awarded	11/4/15	
2015	6/1/15		Not submitted	
2016	7/28/16	Late	3/2/17	Late

### Compliance Monitoring

SORTA acknowledges the need to strengthen its monitoring and enforcement programs. This is one of the DBELO's top priorities. Pages 19–20 of the DBE Program Plan state:

SORTA will strengthen its monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

The Office of Diversity and Inclusion will track and monitor all payments to prime contractors and subsequent payments to subcontractors. The purpose of this monitoring is to maintain the level of commitment proposed by the prime contractor with the subcontractors.

Preferably with the solicitation response, but surely before contract award, the contractor is required to execute a schedule of disadvantaged business enterprise participation identifying DBE subcontractors and the scope of work to be performed or submit sufficient good faith efforts documentation not less than 5 days after bid opening and before contract award.

Diversity and Inclusion will monitor the work performed and the dollar amount paid to the DBE for the life of the contract. After the contractor has been issued an administrative notice to proceed, Diversity and Inclusion will request the prime contractor to complete a quarterly report throughout the life of the contract. This report identifies the names of DBEs proposed by the prime contractor, the proposed goods/services the DBE subcontractor is to provide, and the proposed subcontracted DBE dollar amount paid.

Likewise, the DBE subcontractors are requested to sign payment verification letters attesting to the work performed and the amount paid to them by the end of the quarter covered by the prime's quarterly report (Exhibit E). The amounts referenced as paid to the DBE subcontractors for services identified will be derived from the prime contractor's quarterly report.

In addition to the above, SORTA will require 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 FTA or DOT. This reporting requirement also extends to any certified DBE subcontractor. SORTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. SORTA 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 amount stated in the schedule of DBE participation.

Finally,

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 necessary 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 authority, including responsibility determinations in future contracts. Attachment B, SORTA's Solicitation Document and SORTA's General Terms and Conditions lists the regulations, provisions, and contract remedies available to us in the event 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 site visits, review of certified payrolls, and payments to DBE vendors, and this will occur for each contract/project on which DBEs are participating.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Attachment 3 to the Program Plan (Monitoring and Enforcement Mechanisms) is titled, "Onsite Contract Monitoring and Compliance Review Procedures for Construction and Non-Construction Contracts (Professional Services)." This document is well organized and commits to implementing a strong monitoring program.

As part of its subrecipient agreement with the City of Cincinnati for the Streetcar project, SORTA established responsibilities for myriad compliance requirements, including DBE compliance. As the direct recipient, SORTA was and is responsible for ensuring compliance with the DOT DBE regulations.

The review team interviewed several individuals from SORTA and the City involved with the Streetcar project. SORTA explained that since the City of Cincinnati has its own longstanding minority business enterprise program, SORTA relied on the City to oversee DBE compliance for the Streetcar project. SORTA was not able to demonstrate it independently verified DBE compliance using the procedures outlined in its DBE Program Plan.

As discussed in Section 5.3, the DBE subcontractors interviewed by the review team expressed satisfaction with their experiences, stating they were paid promptly and performed the work for which they were contracted. However, the review team could not verify these assertions. For example, the City uses DBE software to track subcontractor payments, but SORTA's DBELO does not have access to the software. The review team examined City-prepared monthly progress reports that tracked DBE spending, but these reports did not contain sufficient detail on specific payments made to DBEs. Finally, contractor invoices

the review team examined did not include copies of subcontractor invoices or other descriptions of work completed during each billing period.

**Bidders List**

SORTA does not maintain a bidders list with subcontractor firm names, addresses, DBE status, years in business, and annual gross receipts. As part of the implementation of its Small Business Element, SORTA is investigating software that maintains such a list.

**Corrective Actions and Schedule:** Within 60 days of the issuance of the final report, SORTA must submit and/or correct all of its Semi-Annual Uniform Reports beginning with the June 1 2014 submittal.

SORTA must establish procedures for monitoring subrecipient compliance consistent with its own contractor and subcontractor compliance procedures.

SORTA must maintain a bidders list with all of the required information and provide a copy of its bidders list to the FTA Office of Civil Rights.

## 7 Summary Table of Compliance Review Findings

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
1.	Program Plan	26.21	ND		
2.	Policy Statement	26.23	ND		
3.	DBE Liaison Officer	26.25	AC		
4.	Financial Institutions	26.27	AC		
5.	DBE Directory	26.31	ND		
6.	Overconcentration	26.33	ND		
7.	Business Development Programs	26.35	ND		
8.	Determining / Meeting Goals	See 8a-8h below			
8a	Calculation	26.45	D	Insufficient documentation or justification provided for goal calculation	*/8-1-17
8b	Public Participation	26.45	D	Available documentation of public participation is limited to copies of advertisements, with no records of meetings or of comments received	*/8-1-17
8c	Race-Neutral	26.51	D	Lack of sufficient information in goal documentation resulted in all of current goal as race conscious despite having voluntarily implemented a Small Business Element	*/8-1-17
8d	Race-Conscious	26.51			
8e	Good Faith Efforts	26.53	D	Not all contract files contained required GFE language and forms	60/9-17
8f	Protecting Against Termination for Convenience	26.53 and 26.13	D	Requirements are included in DBE Plan but not in standard contract terms and conditions	60/9-17
8g	Counting DBE Participation	26.55	ND		
8h	Quotas	26.43	ND		

Item(s)	Requirement of 49 CFR Part 26	Reference	Site Visit Finding deficiency/no deficiency or advisory comment	Finding(s) of Deficiency	Response Days/Date
9.	Shortfall Analysis and Corrective Action Plan	26.47	D	Shortfall analyses and corrective plans for FY 2015 and FY 2016 not submitted	60/9-17
10.	TVM	26.49	D	DBE Plan procedures for TVM reporting are not specified and recent paratransit vehicle purchases did not follow requirements	60/9-17
11.	Required Contract Provisions	See 11a-c below			
11a	Contract Assurance	26.13	ND		
11b	Prompt Payment	26.29	ND		
11c	Legal Remedies	26.37	ND		
12.	Certification Standards	26.67-26.71			
13.	Certification Procedures	See 13a-d below			
13a.	Onsite Visit	26.83			
13b	Annual Affidavit	26.83			
13c	Interstate Certification	26.85			
13d	Certification Appeals	26.86			
14.	Record Keeping and Enforcements	26.11 and 26.37	D	A Semi-Annual Uniform report remains missing; 2 reports were submitted late	60/9-17
			D	Subrecipient oversight procedures not in place to verify compliance	60/9-17
			D	Bidders list with required elements is not fully maintained	60/9-17

\* To be included with DBE goal submission due 8/1/17





**Attachment A**  
**FTA Notification Letter to Southwest Ohio RTA**



U.S. Department  
Of Transportation  
**Federal Transit  
Administration**

Headquarters

East Building, 5th Floor, TCR  
1200 New Jersey Ave., SE  
Washington, D.C. 20590

November 4, 2016

Mr. Dwight Ferrell  
Chief Executive Officer and General Manager  
Southwest Ohio Regional Transit Authority  
1401-B Bank Street, 2nd floor  
Cincinnati, OH 45214

Dear Mr. Ferrell:

The Federal Transit Administration (FTA) Office of Civil Rights is responsible for ensuring compliance with 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Programs" by its grant recipients and subrecipients. As part of its ongoing oversight efforts, the FTA Office of Civil Rights conducts a number of on-site DBE compliance reviews of these grant recipients. For this reason, the Southwest Ohio Regional Transit Authority (SORTA) has been selected for a review of its overall DBE program to take place in 2016-2017.

The purpose of this review will be to determine whether SORTA is honoring its commitment, as represented by certification to FTA, to comply with the all applicable provisions of 49 CFR Part 26.

The review process includes data collection before the on-site visit, an opening conference, an on-site review of DBE program implementation (including, but not limited to discussions to clarify items previously reviewed, work-site visits, and interviews with staff), interviews with participating prime and DBE contractors and external interested parties, possible work-site visits and an exit conference. The reviewers will complete the on-site portion of the review within a four-day period. FTA has engaged the services of the Collaborative, Inc. of Boston, MA to conduct this compliance review. As part of the review, the following FTA contractor personnel will be granted temporary access to your TrAMS account: William Schwartz. Please do not remove this individual. FTA will do so at the close of the review. The Collaborative and FTA representatives will participate in the opening and exit conferences, with FTA participating by telephone.

We request your attendance at an opening conference scheduled for **Tuesday February 28, 2017**, at 9:00 a.m. Eastern to introduce the Collaborative team and FTA representatives to SORTA. Attendees should include you, the DBE Liaison Officer (DBELO), and other key staff. During the opening conference, the review team members will present an overview of the on-site activities.

Because review team members will spend considerable time on site during the week, please provide them with temporary identification and a workspace within or near your offices for the duration of their visit. The review team will need adequate working space and the use of privately controlled offices with internet access to conduct interviews and review documents.

Please let us know if you will designate a member of your staff to serve as SORTA liaison with the review team and will coordinate the on-site review and address questions that may arise during the visit.

So that we may properly prepare for the site visit, we request that you provide the information described in Enclosure 1, which consists of items that the review team must receive within 21 days of the date of this letter. Please forward these materials to the following contact person:

Bill Schwartz  
The Collaborative, Inc.  
122 South Street Boston, MA 02111  
617-306-9466  
*wschwartz@thecollaborative.com*

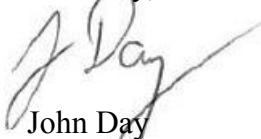
We request the exit conference be scheduled for **Thursday March 2, 2017**, at 3:00 p.m. Eastern to afford an opportunity for the reviewers to discuss their observations with you and your agency. We request that you, the DBELO, and other key staff attend the exit conference.

The FTA Office of Civil Rights will make findings and will provide a Draft Report. You will have an opportunity to correct any factual inconsistencies before FTA finalizes the report. The Draft and Final Report, when issued to SORTA, will be considered public documents subject to release under the Freedom of Information Act, upon request.

SORTA representatives are welcome to accompany the review team during the on-site activities, if you so choose. If you have any questions or concerns before the opening conference, please contact Britney Berry, Program Manager for this compliance review, at 202-366-1065 or via e-mail at *britney.berry@dot.gov*.

Thank you in advance for your assistance and cooperation as we undertake this process. We look forward to working with your staff.

Sincerely,



John Day  
Program Manager for Policy & Technical Assistance

cc: Marisol Simon, Regional Administrator, FTA Region V  
Marjorie Hughes, Regional Civil Rights Officer, FTA Region V  
Demarcus Peters, SORTA Director of Diversity of Inclusion  
Alan Solomon, SORTA TrAMS User Manager  
Bill Schwartz, the Collaborative, Inc.

Southwest Ohio Regional Transit Authority (SORTA)  
Disadvantaged Business Enterprise Program Compliance Review

**Enclosure 1**

**You must submit the following information to Bill Schwartz at the Collaborative within 21 calendar days from the date of this letter.**

1. Current DBE Program Plan (which should include SORTA's organization chart).
2. Goal methodology submission for each of the past 3 Fiscal Years (FY)
3. Any ARRA reports for 2011. The reviewers are able to access SORTA's other ARRA and DBE semi-annual reports through FTA's TrAMS system or as attachments to the TrAMS recipient screen.
4. Current Memorandum of Understanding or similar documents for SORTA's participation in the Unified Certification Program
5. Any additional certification criteria/guidelines used by SORTA in determining DBE eligibility, if applicable
6. Provide the number of DBE applications SORTA has reviewed, approved, and denied each year from FY2012 through FY2015. Include the number of DBE applications and the names of applicants that are currently pending review.
7. Provide a list of ongoing FTA-assisted contracts, the names of DBE firms that are currently working on those contracts, and worksite locations, where applicable.
8. Provide contract records to include:
  - a) The last 15 FTA-assisted contracts awarded by SORTA in FY 2016
  - b) The last 15 FTA-assisted contracts completed by SORTA in FY 2016
  - c) The last 15 FTA-assisted contracts with DBE goals awarded by SORTA in FY 2016
  - d) The last 15 FTA-assisted contracts with DBE goals completed by SORTA in FY 2016
9. The identification of firms, if any, that have worked on SORTA's projects and have graduated from SORTA's DBE program, i.e., exceeded the threshold dollar amounts and are no longer certified
10. Information identifying FTA-funded contracts awarded during FYs 2012 to present by SORTA and its subrecipients. The Federal fiscal year begins October 1 and ends September 30. The information should identify the names of Prime and DBE participants, the DBE schedule of participation or good faith efforts submitted by the prime, the scope of work, and the amounts awarded and actually paid to each DBE.
11. Good Faith Effort criteria established by SORTA
12. Procedures for monitoring that work committed to DBEs is actually performed by those DBEs (e.g., prompt payment procedures and monitoring and enforcement mechanisms)
13. Small Business element as implemented by SORTA
14. FTA-assisted transit vehicle procurements/contracts for the last five (5) years. This information should include the entire contract between your agency and the transit vehicle manufacturer
15. FTA-assisted transit vehicle request for proposals (RFPs) for the last five (5) years

Southwest Ohio Regional Transit Authority (SORTA)  
Disadvantaged Business Enterprise Program Compliance Review

16. List of all bids accepted for the RFPs provided in response to transit vehicle procurements
17. Shortfall analysis and corrective action plan for the last three (3) years
18. List of any subrecipients and the amount of FTA funds allocated to each subrecipient from 2014 through present
19. Names of interested a party (external organizations) with which SORTA has interacted on the DBE program issues
20. Any complaints received concerning SORTA's DBE program over the past five (5) years
21. The DBELO official position description
22. Other pertinent information determined by SORTA's staff to shed light on its DBE compliance efforts



**Attachment B**  
**SORTA Response**

**Subject:** Re: Draft Report: SORTA DBE Review

**Date:** Monday, July 10, 2017 at 9:55:34 AM Pacific Daylight Time

**From:** Demarcus Peters

**To:** Day, John (FTA), Dwight Ferrell

Mr. Day,

Please see the attached pdf. Corrections were made to pages 23, 25 and page 35.

Corrections to the following chart on page 35 are forthcoming;

**Table 6-1 SORTA DBE Goal (18.23 Percent) Attainment (FFY 2014–2016)**

FFY	Contracts Awarded	DBE Spending	Percent
2014	\$30,000	\$30,000	100.0%
2015	\$5,566,430	\$16,500	0.3%
2016	\$1,414,455	\$49,178	3.5%
<b>Total</b>	<b>\$7,010,875</b>	<b>\$95,678</b>	<b>1.4%</b>

Thank you,

**Demarcus L. Peters, J.D.**

Director,  
Diversity and Inclusion  
Southwest Ohio Regional Transit Authority  
1401-B Bank Street, 2nd floor | Cincinnati, OH 45214  
Office: 513.632.7614 | Cell: 513.497.9099  
[dpeters@go-metro.com](mailto:dpeters@go-metro.com)  
[www.go-metro.com](http://www.go-metro.com)



**Disclaimer**

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>>> "Day, John (FTA)" <John.Day@dot.gov> 6/28/2017 11:00 AM >>>  
Mr. Ferrell-

Attached for your review is the draft report from the Southwest Ohio Regional Transit Authority (SORTA) DBE compliance review conducted on February 28-March 2, 2017. Please review for any factual errors and provide any comments to me by July 10. If you have no comments, please let me know.

Best Regards,

**John Day**

Program Manager for Policy and Technical Assistance | Office of Civil Rights  
Federal Transit Administration | U.S. Department of Transportation



1200 New Jersey Ave., SE, Room E-54-310 | Washington, DC 20590

☎ 202.366.1671 | ✉ [john.day@dot.gov](mailto:john.day@dot.gov) | 🌐 [www.transit.dot.gov](http://www.transit.dot.gov)



**Attachment C**  
**SORTA DBE Program Plan**



**SOUTHWEST OHIO  
REGIONAL TRANSIT AUTHORITY  
(SORTA)**

**DISADVANTAGED BUSINESS ENTERPRISE  
(DBE) PROGRAM**

**September 30, 2014**



## Disadvantaged Business Enterprise (DBE) Program Policy Statement

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

It is the policy of SORTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Darryl Haley, Executive Director of Development has been delegated as the DBE Liaison Officer. In that capacity, Mr. Haley is responsible for oversight of 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 SORTA in its financial assistance agreements with the Department of Transportation.

SORTA has disseminated this policy statement to the Board of Directors and all 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. This statement is included in all solicitation packages and has been communicated to local business groups, chambers and community organizations.

Signature of Interim Chief Executive Officer:

Date: 9-29-14

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1, 26.23: Objectives**

The objectives are found in the Policy Statement on the first page of this program.

### **Section 26.3: Applicability**

SORTA 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 TEA-21, Pub. L. 105-178.

### **Section 26.5: Definitions**

SORTA will adopt the definitions contained in Section 26.5 of 49 CFR for this program.

### **Section 26.7: Non-discrimination Requirements**

SORTA 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, SORTA 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**

#### **Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)**

SORTA will report DBE participation to the FTA through TEAM using the uniform report of DBE awards or commitments and payments found in Appendix B to the DBE regulation. SORTA will report this information on a semi-annual basis - June 1 and December 1.

#### **26.11(c): Bidders List:**

SORTA 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:

SORTA will create and maintain a database of known vendors, including their status as DBEs or other small or disadvantaged-owned businesses. For each solicitation, SORTA will consult this database, historical information from prior procurements, the State of Ohio UCP registration list, the City of Cincinnati and Hamilton County directories of small or disadvantaged-owned businesses.

**Section 26.13: Assurances**

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

**Section 26.13(a): Federal Financial Assistance Agreement Assurance**

SORTA 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 SORTA 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.

**26.13(b): Contract Assurance**

SORTA 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 SORTA 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 26.25: DBE Liaison Officer (DBELO)**

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

Darryl Haley  
Executive Director of Development/DBE Officer  
602 Main Street, Suite 1100  
Cincinnati, Ohio 45202  
[dhaley@go-metro.com](mailto:dhaley@go-metro.com)  
513-632-7690

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that SORTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer of SORTA concerning DBE program matters. An organization 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 three (3) 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 SORTA'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. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains SORTA's updated directory on certified DBEs.

The Procurement Department DBE Liaison and other buyers will (1) request that the DBE Liaison Officer set goals, when appropriate; (2) include standard information and forms for DBE participation in the solicitation; (3) ensure that all known DBEs and other small or disadvantaged-owned businesses are notified of the procurement; review vendor responses to the solicitation for commitment to a goal as a matter of responsiveness; in consultation with the DBE Liaison Officer, review the apparent successful offer for compliance with the DBE requirements in the solicitation as a matter of responsibility; and, in consultation with the DBE Liaison Officer, make any necessary evaluations and determinations of good faith efforts by the apparent, successful offeror.



### **Section 26.27: DBE Financial Institutions**

It is the policy of SORTA 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:

The Procurement Director reviewed the history of prior procurements and researched the Ohio UCP directory for DBE institutions. We will also re-evaluate the availability of DBE financial institutions every two (2) years. To date, we have not identified any economically disadvantaged financial institutions.

### **Section 26.29: Prompt Payment Mechanisms**

#### **26.29(a): Prompt Payment**

SORTA 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 contract receives from SORTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of SORTA. This clause applies to both DBE and non-DBE subcontracts.

Within ten (10) working days after receiving payment from SORTA, Contractor shall pay each sub-consultant, subcontractor, vendor or material supplier (collectively "Subcontractors") all amounts due and invoiced by the subcontractor and paid to the Contractor by SORTA.

If this Agreement (or a Task Order) specifies that SORTA will withhold from Contractor a specific percentage or specific dollar amount of the work as a retainer, and/or if Contractor withholds, through agreement with any Subcontractor, a specific percentage or specific dollar amount of the subcontracted work or materials from any Subcontractor, Contractor shall release any and all retainage due to each such Subcontractor within ten (10) working days following the completion of that Subcontractor's work hereunder

#### **26.29(b): Retainage**

The prime contractor agrees to return retainage payments to each subcontractor within ten (10) 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 SORTA. This clause applies to both DBE and non-DBE subcontracts.

#### **26.29(d): Monitoring and Enforcement**

SORTA has established monitoring and verification of payroll information for contractors and subcontractors. SORTA's Manager of Facilities and Grounds verifies that subcontractors are being paid promptly and return on retainage is occurring.

### **Section 26.31: Directory**

SORTA uses the on-line directory from the State of Ohio, Department Of Transportation, DBE Unified Certification Program website, <https://www.ohiucp.org/index.vm>, to keep the most recent certification information. We make this Directory available on our Intranet for internal cost center managers to use, as well as our Internet for interested persons to find certified DBEs.

### **Section 26.33: Overconcentration**

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

We will re-evaluate for overconcentration every two (2) years.

### **Section 26.35: Business Development Programs**

SORTA has not established a business development program. We will re-evaluate the need for such a program every year.

### **Section 26.37: Monitoring and Enforcement Mechanisms**

SORTA 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 B, SORTA's Solicitation Document and SORTA's General Terms and Conditions lists the regulations, provisions, and contract remedies available to us in the event 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 site visits, review of certified payrolls, and payments to DBE vendors, and this will occur for each contract/project on which DBEs are participating.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39: Small Business Participation**

SORTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

## **Section 26.39: Small Business Participation - Fostering Small Business Participation**

### **Objectives of the Program**

The goal of SORTA is to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation in SORTA's contracting opportunities, and to assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

### **Strategies**

SORTA will use the following strategy to accomplish these goals:

On prime contracts not having DBE contract goals, SORTA will encourage 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. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/SBE participation, even when the prime contractor might have the ability and otherwise prefer to perform these work items with its own forces.

SORTA will consider un-bundling contracts on a case-by-case basis. When practical, on large scope contracts containing work involving different disciplines or trades, such contracts may be divided into potentially smaller contracting opportunities.

In addition, SORTA will accomplish its goals by doing the following:

1. Helping small businesses to better understand SORTA's contracting and procurement opportunities.
2. Championing the case for utilization of small businesses among SORTA departments and prime contractors.
3. Continuing to identify and utilize small business firms that provide goods and services purchased by SORTA.
4. Engaging actively and openly with SORTA departments and the community to share experiences and identify new opportunities.
5. Encouraging small businesses, including those owned by minority and women, to pursue MBE, WBE and other relevant certifications.
6. Hosting and participating in workshops, business development meetings and other outreach events intended to enhance procurement opportunities for small businesses.

SORTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on all procurements by small business concerns (both DBEs and non-DBE small businesses):

1. The Procurement staff meets routinely to discuss DBE and non-DBE small businesses involvement and encouragement.
2. Staff interacts on a regular basis with SORTA's Board and Executive staff regarding encouragement of DBE and non-DBE small business participation.
3. Provide learning opportunities, vendor fairs and pre-bid conferences to encourage participation by DBE and non-DBE small businesses.

4. Procurement staff accesses the Ohio DBE and City of Cincinnati SBE directory to identify potential DBE and non-DBE small businesses participants in each procurement.
5. Each Purchase Requisition is reviewed by Director of Procurement for DBE and non-DBE small business participation. The Director or his staff reviews the specifications or scope of work for small business subcontracting opportunities by removal of unnecessary and unjustified bundling of contract requirements.
6. SORTA is pursuing an acquisition of a technology solution to enhance its DBE and non-DBE small business outreach. The planned solution includes pre-award DBE and non-DBE small business inclusion and post-award contract administration modules to ensure full utilization of DBE and non-DBE small business. The solution will lend to ease of business participation by online and/or cellular tools. Post-award solution will include prompt payment administration.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43: Set-asides or Quotas**

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

### **Section 26.45: Overall Goals**

In accordance with Section 26.45, SORTA will submit its triennial, overall DBE goal to the FTA on August 1st of the year specified by the FTA for each three (3) year period. First period is Federal fiscal year 2015-2017.

SORTA will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals, as directed by FTA.

The process generally used by SORTA to establish overall DBE goals is as follows

1. Determine the number of ready, willing and able DBE's in our market from the Ohio DBE directory that perform work in the same NAICS codes.
2. Examine any evidence in our jurisdiction to determine if any adjustment to the contract base figure is necessary.
3. Determine the number of ready, willing and able vendors in our market that perform work in the same NAICS codes.
4. The goal is established as the percentage of DBE's available to the number of total vendors available.

SORTA publishes 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 our principal office for 30 days following the date of the notice, and informing the public that we will accept comments on the goals for 45 days from the date of the notice. Notices are published in the Cincinnati Enquirer Newspaper and the Passenger Transport, and the goal is also shared with the minority chambers in Cincinnati. Normally, we will issue this notice by June 1 of each three (3) year period. The notices include the address to which comments may be sent and the address where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will begin using our overall goal on October 1 of the specified year, unless we have received other instructions from the 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. Our goal will remain effective for the duration of the three (3) year period established and approved by the FTA.

#### **Section 26.47: Goal Setting and Accountability**

If the awards and commitments shown on SORTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze, in detail, the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis.

#### **Section 26.49: Transit Vehicle Manufacturers Goals**

SORTA 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, SORTA 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: Meeting Overall Goals/Contract Goals**

SORTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, SORTA will:

1. Consult available directories and ensure that all known DBEs and other small or disadvantaged-owned businesses are notified of each procurement, whether or not a DBE goal is established;
2. Conduct vendor outreach events to encourage participation by DBEs and other small or disadvantaged-owned businesses, and encourage non-DBEs to become certified;
3. Research to determine why such firms do not respond to solicitations; and
4. Include wording in each solicitation encouraging the use of both DBEs and non-DBEs on solicitations where no DBE goal is set.

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

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

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

### **Section 26.53: Good Faith Efforts Procedures**

#### **26.53(a): Award of Contracts with a DBE Contract Goal**

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, SORTA will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

#### **26.53(a) &(c): Evaluation of Good Faith Efforts**

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible:

Darryl Haley, DBE Liaison Officer  
Kunjan Dayal, Assistant Director of Procurement/Procurement DBE Liaison

The process used to determine whether good faiths efforts have been made by a bidder are as follows:

1. Good faith efforts are those that could reasonably be expected to result in goal attainment by a bidder or proposer who aggressively and actively seeks to obtain DBE participation.
2. The efforts listed in Appendix A to 49 CFR 26, and described below are recommended as those that bidders may make to obtain DBE participation. It does not represent a mandatory checklist of required actions; no one or combination is required in all cases; nor is it intended to be exhaustive; other factors or efforts may be relevant in appropriate instances.
3. SORTA will examine the quantity and intensity of the efforts, as well as the type of actions taken. Efforts that are merely pro forma are not sufficient, even though they may be sincerely motivated.

SORTA's criteria for determining whether or not a good faith effort was made follows the solicitation document, which may include, but is not limited to the following:

The standard by which SORTA will determine whether the efforts made by a Bidder/Proposer were good faith efforts, is whether such efforts could reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement. In reaching this decision, SORTA may consider all efforts advanced by the Bidder/Proposer as well as the following:

1. Did the Bidder/Proposer attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
2. Did the Bidder/Proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
3. Did the Bidder/Proposer provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively?
4. Did the Bidder/Proposer follow up with the DBE firms interested in participating?
5. Did the Bidder/Proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
6. Did the Bidder/Proposer provide adequate information about plans, specifications, and/or contracting requirements?
7. Did the Bidder/Proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
8. Did the Bidder/Proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
9. Did the Bidder/Proposer effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc., that have knowledge of available DBE firms or the names or organizations to locate such firms?

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

**26.53(b): Information to be Submitted**

SORTA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

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.

**26.53(d): Administrative Reconsideration**

Within five (5) business days of being informed by SORTA that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Metro, Director of Procurement, 1401-B Bank Street, Cincinnati, Ohio

45214, wparkes@go-metro.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.

**26.53(f): Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals**

SORTA requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without SORTA's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to SORTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to SORTA prior to consideration of the request to terminate. The DBE will then have five (5) business days to respond and advise SORTA why it objects to the proposed termination. The five (5) business day period may be reduced if the matter is one of public necessity (e.g., safety).

In those instances where "good cause" exists to terminate a DBE's contract, SORTA will require the prime 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.

**Sample Bid Specification:**

It is the policy of the U.S. Department of Transportation that socially and economically disadvantaged and women's business enterprises (*DBEs*), as defined in Title 49, Code of Federal Regulations, Part 26, shall be afforded an opportunity to participate, to an extent reflective of their availability in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR, Part 26, apply to this agreement.



SORTA annually sets overall DBE goals for work to be performed under its contracts, including construction activity procurement of common goods and services, and personal service contracts. While the expected percentage of certified DBE utilization may vary from contract to contract due to the availability of DBEs in any given line of work, SORTA believes that overall goals to be realistically obtainable over time with the assistance of the federal government, the business community and DBE organizations.

Participants in this procurement agree to ensure that DBEs, as defined at 49 CFR, Part 26, have an opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement, to an extent reflective of their availability in the community, whether or not a specific goal for participation was set for this solicitation. In this regard, the bidders shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23 and 26, and SORTA's DBE Program to ensure that DBEs have such an opportunity to compete for the performance of contracts. Neither the bidders nor the selected contractor shall discriminate on the basis of race, color, national origin or sex in the performance of a resulting DOT-assisted contract.

In addition to the DBE goals, the U.S. Department of Transportation also encourages its grantees and their contractors to maximize participation by non-DBE socially and economically disadvantaged businesses and to document their participation.

SORTA has specified a DBE goal of \_\_\_\_\_ percent (XX%) for the work to be performed under this contract.

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE can be counted toward DBE goals.
1. Count the entire amount of that portion of a construction contract (or other contract not covered by Paragraph (A)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates).
  2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - a) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  - b) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
  
4. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and of the relevant factors all must be evaluated. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed. In order to be a regular dealer:
  - a) The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business; if the person both owns and operates distribution equipment for long-term lease agreement and not on an ad hoc or contract by contract basis.
  - c) Packers, brokers, manufacturers', representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
  - d) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a

regular dealer, count the entire amount of fees or commissions charged for the delivery of materials or supplies required on a job site toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves should be counted toward DBE goals.

- e) Sixty percent of the total dollar value will be counted in the case of a DBE supplier that is not a manufacturer, provided that the DBE supplier performs a commercially useful function in the supply process to include brokers etc. in accordance with 49 CFR 26.55 Paragraph 2b.

In addition to any other requirements contained in an Invitation for Bids (IFB) or Request for Proposals (RFP), the bid or proposal must include a representation that:

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

Each bidder must include a statement of the level of DBE participation attained through such effort in Attachment B-1. This submittal is regarded as a matter of responsiveness. Failure to make these submittals will serve to disqualify the bid as non-responsive to this solicitation.

- B. Each Bidder/Proposer should also prepare a complete DBE Participation Plan that sets forth the extent of DBE involvement in this procurement. these materials.

#### **Section 26.55: Counting DBE Participation**

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

### **SUBPARTS D & E- CERTIFICATION**

#### **Section 26.81: Unified Certification Programs**

SORTA is a member of the Unified Certification Program (UCP) administered by the Ohio Department of Transportation (ODOT). The UCP will meet all of the requirements of this section. SORTA will use and count for DBE credit only those DBE firms certified by the ODOT:

Ohio Department of Transportation (ODOT)  
Office of Contracts, DBE Section  
1980 W. Broad Street, 1st Floor  
Columbus, OH 43223  
(614) 728-9598  
(614) 728-2078 (fax)  
<https://www.ohioucp.org/index.vm>

### **Section 26.83-26.91: Procedures for Certification Decisions**

Any firm or complainant may appeal an ODOT decision in a certification matter to the USDOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave., SE  
West Building, 7th Floor  
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 disclosure to third parties any information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. As a political subdivision of the State of Ohio, SORTA is subject to the public records provisions of Ohio Revised Code Chapter 149.43.

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 (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SORTA or the 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 states in the schedule of DBE participation.

## **ATTACHMENTS**

Attachment 1: SORTA Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies  
(See SORTA's Attachment B)

Attachment 4: Goal Setting Methodology

Attachment 5: Good Faith Efforts Forms (See SORTA's Attachment B)

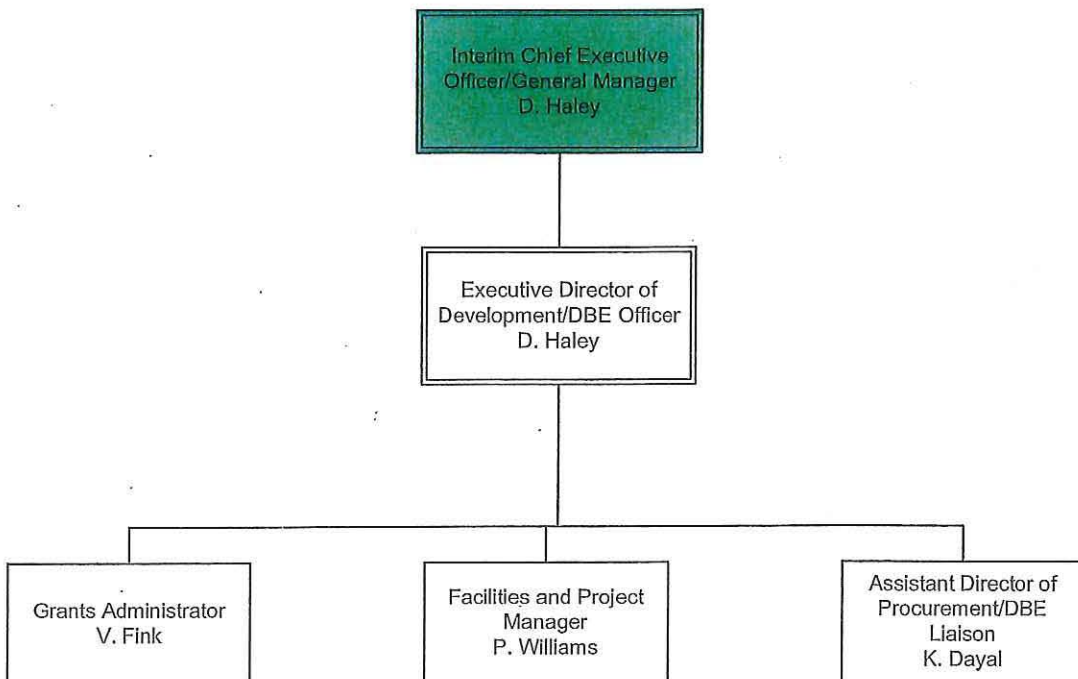
Attachment 6: Certification Forms (See SORTA's Attachment B)

Attachment 7: DBE Regulation, 49 CFR Part 26

Attachment 1  
Organizational Chart

**SORTA**

**DBE**



**Attachment 2**  
**DBE Directory**

Please access the following link for the Ohio Department of Transportation DBE Directory:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise>

**Attachment 3**  
**Monitoring and Enforcement Mechanisms/Legal Remedies**

Please see SORTA's Attachment B



**Attachment 4**  
**Section 26.45: Overall Goal Calculation**

**Amount of Goal**

1. SORTA's overall goal for the following time period 20\_\_-20\_\_ is the following: \_\_% of the Federal financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.
  
2. \$\_\_\_\_\_ is the dollar amount of DOT-assisted contracts that SORTA expects to award during FFY20\_\_. This means that SORTA has set a goal of expending \$\_\_\_\_\_ with DBEs during this fiscal year/project.

**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:

The data source or demonstrable evidence used to derive the denominator was:

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 \_\_%.

The data used to determine the adjustment to the base figure was:

The reason we chose to adjust our figure using this data was because:  
From this data, we have adjusted our base figure to:

## **Public Participation**

SORTA publishes our goal information in the following publications:

- Cincinnati Enquirer
- Passenger Transport Magazine

We have received no comments from any individuals or organizations.

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

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

- Vendor fair;
- Examining state and local lists of small and disadvantaged businesses;
- Vendor Outreach Programs;
- Cooperate with Chambers of Commerce and other organizations.

We estimate that, in meeting our overall goal of \_\_%, we will obtain \_\_% from race-neutral participation and 0% through race-conscious measures.

**Attachment 5**  
**Forms 1 & 2 for Demonstration of Good Faith Efforts**

Please see SORTA's Attachment B

**Attachment 6**  
**Certification Forms**

Please see SORTA's Attachment B

**Attachment 7**  
**Regulations: 49 CFR Part 26**

Please access the following link for the Regulations:

<http://www.ecfr.gov/cgi-bin/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>

## ATTACHMENT B

## DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

## DEPARTMENT OF TRANSPORTATION POLICY

It is the policy of the U.S. Department of Transportation that socially and economically disadvantaged and women's business enterprises (DBEs), as defined in Title 49, Code of Federal Regulations, Part 26, shall be afforded an opportunity to participate, to an extent reflective of their availability in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR, Part 26, apply to this agreement.

SORTA annually sets overall DBE goals for work to be performed under its contracts, including construction activity procurement of common goods and services, and personal service contracts. While the expected percentage of certified DBE utilization may vary from contract to contract due to the availability of DBEs in any given line of work, SORTA believes that overall goals to be realistically obtainable over time with the assistance of the federal government, the business community and DBE organizations.

Participants in this procurement agree to ensure that DBEs, as defined at 49 CFR, Part 26, have an opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement, to an extent reflective of their availability in the community, whether or not a specific goal for participation was set for this solicitation. In this regard, the bidders shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23 and 26, and SORTA's DBE Program to ensure that DBEs have such an opportunity to compete for the performance of contracts. Neither the bidders nor the selected contractor shall discriminate on the basis of race, color, national origin or sex in the performance of a resulting DOT-assisted contract.

In addition to the DBE goals, the U.S. Department of Transportation also encourages its grantees and their contractors to maximize participation by non-DBE socially and economically disadvantaged businesses and to document their participation.

## I. DEFINITIONS

The term "**disadvantaged business**" means a small business concern, which is at least 51 percent owned by one or more socially and economically disadvantaged persons or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**"Socially and economically disadvantaged individual"** means a citizen of the United States (or lawfully admitted permanent resident) who meets the criteria set forth in 49 C.F.R. Section 26.5. In order to meet Federal requirements and to provide an opportunity for participation by certified DBEs, SORTA specifies a percentage of participation goal in contracts with subcontracting opportunities (the percentage may be zero).

The transit vehicle manufacturers are exempt from the requirements, Terms and Conditions of this Attachment B, but must, as a condition for bidding, show evidence of FTA certification.

## II. CONTRACT GOALS

**SORTA has specified a DBE goal of \_\_\_\_\_ percent (XX%) for the work to be performed under this contract.**

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE can be counted toward DBE goals.
1. Count the entire amount of that portion of a construction contract (or other contract not covered by Paragraph (A)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliates).

2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - a) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  - b) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
4. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and of the relevant factors all must be evaluated. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed. In order to be a regular dealer:
  - a) The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business; if the person both owns and operates distribution equipment for long-term lease agreement and not on an ad hoc or contract by contract basis.
  - c) Packagers, brokers, manufacturers', representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
  - d) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for the delivery of materials or supplies required on a job site toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials and supplies themselves should be counted toward DBE goals.
  - e) Sixty percent of the total dollar value will be counted in the case of a DBE supplier that is not a manufacturer, provided that the DBE supplier performs a commercially useful function in the supply process to include brokers etc. in accordance with 49 CFR 26.55 Paragraph 2b.

III. **BIDDING REQUIREMENTS, TERMS AND CONDITIONS**

A. In addition to any other requirements contained in this Invitation for Bids or Request for Proposals, the bid or proposal must include a representation that:

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

Each bidder must include a statement of the level of DBE participation attained through such effort in Attachment B-1. This submittal is regarded as a matter of responsiveness. Failure to make these submittals will serve to disqualify the bid as non-responsive to this solicitation.

B. Each Bidder/Proposer should also prepare a complete DBE Participation Plan that sets forth the extent of DBE involvement in this procurement. These materials are to be provided upon request, and will be considered in determining responsibility.

C. DBE Participation Plans shall include the following minimum information:

1. DBE Participation Schedule, (Attachment B-3) which includes:
  - a) Names and addresses of the DBE entities that will participate in the contract;
  - b) The dollar amount of the participation of each named DBE;
  - c) A description of the work each named DBE will perform;
  - d) Verification of Certification (Attachment B-2) and Letter of Intent (Attachment B-4) from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.
2. If the DBE goal is not met, the Bidder/Proposer must document in Attachment B-5 entitled Good Faith Effort Documentation the good faith efforts it made to include DBE participation in the contract prior to submitting the bid or proposal. The documentation of the efforts is discussed in greater detail in paragraph 6 of this Section.
3. The following standards shall be applied in assessing the responsibility of the DBE plan submitted:
  - a) Whether the participation plan contains capable currently certified DBE firms.
  - b) Whether the firms listed in the plan are performing a commercially useful function
  - c) Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
  - d) Whether the plan exhibits a likelihood of goal attainment.
  - e) Whether the prime/sub relationships are firm, i.e., whether conditional subcontractors have been entered.

D. Agreements between a Bidder/Proposer and a DBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.



Only DBE entities certified under the State of Ohio Uniform Certification Program ([www.ohioucp.org](http://www.ohioucp.org)) are eligible for inclusion in a plan. Consult the DBE Directory, which is available on the above website. All DBE entities are eligible for certification. Applications for certification must be made Ohio UCP Certification Application and submitted in advance of bid date.

1. The DBE must have submitted its application for certification prior to bid submittal, and be certified prior to contract award; by Federal regulation, the Uniform Certification Program may take up to 180 days to reach a certification decision.
  2. Bidders/Proposers should not rely upon anticipated approval of the certification applications submitted by its proposed DBEs, since DBEs which are not certified by time of award will not be credited toward the goal, and failure to obtain certification might change the prime Bidder/Proposer's status from compliant to non-compliant.
  3. However, substitution of DBE entities appearing in a plan may be permitted where SORTA's DBE Officer (DBEO) determines that such substitution will not result in an abuse of the DBE Program. The burden of demonstrating the propriety of such substitution lies with the Bidder/Proposer seeking such substitution.
- E. SORTA may at any time prior to award seek clarification or additional information bearing upon Bidder/Proposer responsibility in respect of DBE involvement with this procurement. SORTA requires that such information should be should be submitted within three (3) business days of the date a request is made.

The Bidder/Proposer's commitment to a specific goal for DBE utilization as detailed in its DBE Plan shall constitute a presumption that good faith efforts to meet the DBE goal by subcontracting to or undertaking to joint venture with DBE firms have been made. If the Bidder/Proposer fails to meet the goal, it will carry the burden of furnishing sufficient documentation to demonstrate its good faith efforts.

The standard by which SORTA will determine whether the efforts made by a Bidder/Proposer were good faith efforts is whether such efforts could be reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement. In reaching this decision, SORTA may consider all efforts advanced by the Bidder/Proposer as well as the following:

1. Did the Bidder/Proposer attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
2. Did the Bidder/Proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
3. Did the Bidder/Proposer provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively?
4. Did the Bidder/Proposer follow up with the DBE firms interested in participating.
5. Did the Bidder/Proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?

6. Did the Bidder/Proposer provide adequate information about plans, specifications, and/or contracting requirements?
  7. Did the Bidder/Proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
  8. Did the Bidder/Proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
  9. Did the Bidder/Proposer effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc., that have knowledge of available DBE firms or the names or organizations to locate such firms?
- H. In the event a contract is awarded as a result of this procurement, the DBE Participation Plan submitted by the successful Bidder/Proposer and the terms, conditions and requirements contained in this notice shall become an integral part of the contract, binding the Contractor to full and faithful performance in accordance with said plan.
- I. SORTA shall not award a contract to a Bidder/Proposer which has not either committed to full attainment of the established goal, or demonstrated good faith efforts to attain the goal prior to submitting a bid or proposal.
- J. The contractor must receive the approval of SORTA's Procurement Office before terminating or making substitution for any subcontractors listed in its DBE plan.
- K. During the performance of contract and for a period of up to three (3) years following completion of the contract work, SORTA may initiate reviews for compliance with the requirements of SORTA's DBE Program and the Contractor's DBE Participation Plan. Such reviews may involve a review of monthly statements, desk audits and/or onsite reviews. Where a Contractor is found by SORTA to have failed to comply with the requirements of the DBE Program or the Contractor's DBE Participation Plan, the Contractor will be required to take corrective action. If corrective action is not promptly taken by the offending Contractor, the following sanctions may be imposed (singly, in any combination, and in addition to any other remedies provided by law or equity):
1. SORTA may withhold all further payments under the contract.
  2. The Contractor may be ordered to stop work
  3. The contract may be terminated for breach.
  4. Suspension or debarment proceedings may be commenced in accordance with 49 CFR, Part 29.
  5. The Director of Procurement may find the defaulting contractor non-responsible in respect to other solicitations for a stated period of time.
  6. The contract payments may be reduced by an amount equal to that designated in the DBE plan for DBE participation.
  7. Any performance bond(s) for the contract may be enforced.
- K. The Contractor will keep records and documents for three (3) years following performance of this contract in accordance with this notice and the applicable terms and conditions of the contract. Such records and, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of SORTA and will be submitted to SORTA upon request, together with any other compliance information which such representative may require.

- L. If, at any time, the U.S. Department of Transportation or SORTA has reason to believe that any person or firm has willfully or knowingly provided incorrect information or made a false statement, it may refer the matter to the General Counsel of the Department of Transportation, which may initiate debarment proceedings in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as they deem appropriate.
- M. Bidders/Proposers for this solicitation agree to be bound by all the requirements, terms and conditions of this notice.
- N. Nothing in this notice shall be interpreted to nullify or modify any other provision of the solicitation or resultant contract.

## ATTACHMENT B-1

### DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

*THIS PAGE MUST BE COMPLETED BY PRIME BIDDER TO INDICATE THE AMOUNT (PERCENTAGE) OF DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.*

---

The undersigned, as a representative of the entity, \_\_\_\_\_, submitting a bid/proposal for IFB/RFP No. \_\_\_\_\_, titled \_\_\_\_\_, hereby acknowledges that the DBE goal established for this project is \_\_\_\_\_ %.

Note: Bidder or Proposer shall make one of the two certifications noted below:

1.  The Bidder/Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is \_\_\_\_\_ % and represents attainment of the DBE participation goal. Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation are attached.
  
2.  The Bidder/Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is \_\_\_\_\_ %. However, this level of DBE participation is less than the goal established for this project. The Bidder/Proposer has attached:
  - a. the Schedule of DBE participation showing the level of DBE participation the Bidder/Proposer has been able to obtain, supplemented with Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation; and,
  - b. documentation of the Bidder/Proposer's good faith efforts to achieve the goal established for this project. This documentation shall include Certificates of DBE Unavailability for each firm contacted by the prime Bidder/Proposer which will not be participating in performance of the contract. The documentation of these efforts is discussed in greater detail in Section III. G of Attachment D.

---

Date

Representative of Bidder/Proposer

Title

(TO BE SUBMITTED WITH BID OR PROPOSAL)

**ATTACHMENT B-2**  
**DBE AFFIDAVIT**

*THIS PAGE TO BE COMPLETED BY EACH DISADVANTAGED BUSINESS ENTERPRISE.*

I hereby declare and affirm that I am the (title)  
and

duly authorized representative of the (firm) \_\_\_\_\_

\_\_\_\_\_, whose

address is \_\_\_\_\_

I may be contacted at \_\_\_\_\_ or \_\_\_\_\_  
(Telephone Number) (Email Address)

I HEREBY DECLARE AND AFFIRM THAT MY FIRM IS A DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFIED BY THE OHIO UNIFORM CERTIFICATION PROGRAM AND THAT I WILL PROVIDE INFORMATION AND/OR THE CERTIFICATION TO DOCUMENT THIS FACT.

I DO SOLEMNLY SWEAR OR DECLARE AND AFFIRM THAT THE CONTENTS OF THE FOREGOING STATEMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Affiant) (Date)

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared

\_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

(SEAL)



The standard by which SORTA will determine whether the efforts made by a Bidder or Proposer were good faith efforts is whether such efforts could be reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement. In reaching this decision, SORTA may consider all efforts advanced by the Bidder/Proposer as well as the following:

1. Whether the Bidder/Proposer attended any pre-solicitation or pre-bid meetings that were scheduled by SORTA to inform DBEs of contracting and subcontracting opportunities;
2. Whether the Bidder/Proposer advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
3. Whether the Bidder/Proposer provided written notice to a reasonable number of specific DBEs, that their interest in the contract was being solicited in sufficient time to allow the DBEs to participate effectively;
4. Whether the Bidder/Proposer followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the Bidder/Proposer selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Whether the Bidder/Proposer provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
7. Whether the Bidder/Proposer negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Whether the Bidder/Proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
9. Whether the Bidder/Proposer effectively used the services of available minority community organizations; disadvantaged contractors' groups; local, state and Federal disadvantaged business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

The following standards shall be applied in assessing the responsibility of the DBE plan submitted:

1. Whether the participation plan contains capable certified DBE firms.
2. Whether the firms listed in the plan are performing a commercially useful function.
3. Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
4. Whether the plan exhibits a likelihood of goal attainment.
5. Whether the prime/sub relationships are firm, i.e., whether conditional subcontractors have been entered.

### ATTACHMENT B-4 LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

Solicitation Title: \_\_\_\_\_

Solicitation No.: \_\_\_\_\_

To: \_\_\_\_\_ Prime Bidder or Proposer

\_\_\_\_\_ Address

\_\_\_\_\_ City/State

I am the (title) \_\_\_\_\_ and duly authorized representative of the (firm name) \_\_\_\_\_ which intends to perform work for the above project operating as (*strike out conditions that do not apply*) an individual, a Company, a Corporation, organized and existing under the law of the State of \_\_\_\_\_, or a Proprietorship, a Partnership, or Joint Venture consisting of:

\_\_\_\_\_  
\_\_\_\_\_

The firm that I represent is a Disadvantaged Business Enterprise (DBE) \_\_\_ certified by the Ohio UPC with a certification date of \_\_\_\_\_, 20\_\_\_; or \_\_\_ the firm submitted its application for certification to the Ohio UPC on \_\_\_\_\_, 20\_\_\_, but has not yet received a certification decision.

The undersigned is prepared to perform the following described work in connection with the above project, (specify in appropriate detail particular work items or parts thereof to be performed):

\_\_\_\_\_  
\_\_\_\_\_

at the following price: \_\_\_\_\_.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>Type of Work and Items</u>	<u>Work Hours Involved</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

I further represent that \_\_\_\_\_ percent (\_\_\_%) of the dollar value of my subcontract will be performed by subcontractors and/or suppliers, which are not certified by SORTA as a Disadvantaged Business Enterprise.

The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with SORTA.



Respectfully submitted, this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(DBE Firm Name) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Signature) \_\_\_\_\_

(Name Typed) \_\_\_\_\_

(Title) \_\_\_\_\_



- 3) Did the bidder/proposer provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively?
  - 4) Did the bidder/proposer follow up with the DBE firms interested in participating?
  - 5) Did the bidder/proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
  - 6) Did the bidder/proposer provide adequate information about plans, specifications, and/or contracting requirements?
  - 7) Did the bidder/proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
  - 8) Did the bidder/proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
  - 9) Did the bidder/proposer effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc. that have knowledge of available DBE firms or the names of organizations to locate such firms?
- 

Submitted By

Date Submitted

Reviewed by

Date Reviewed

**Please check if additional documentation has been added and list each attachment below:**

- 1.
- 2.
- 3.
- 4.

**DBE UNAVAILABILITY CERTIFICATION**  
**(COMPLETE A SEPARATE FORM FOR EACH DBE CONTRACTED)**

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_  
*(Name of Signer) (Title of Signer) (Name of Bidder/Proposer)*

certify that on \_\_\_\_\_, 20\_\_\_\_, I contacted the following DBE contractor to obtain a bid/proposal for work items to be performed on SORTA's Contract No. \_\_\_\_\_.

**DBE Contractor**

**Work Items Sought**

**Form of Bid Sought**

*(i.e., Unit Price Materials & Labor, Labor Only, etc.)*

\_\_\_\_\_

\_\_\_\_\_ was offered an opportunity to propose on the  
*(Name of DBE)*  
above-identified work on \_\_\_\_\_, 20\_\_\_\_.  
*(Date)*

To the best of my knowledge and belief, said disadvantaged contractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid/proposal for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

The above statement is a true and accurate account of why \_\_\_\_\_  
*(Name of DBE)*  
did not submit a bid/proposal on this project.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENTS**

Attachment 1: SORTA Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms

Attachment 4: Goal Setting Methodology

Attachment 5: Good Faith Efforts Forms

Attachment 6: Certification Forms

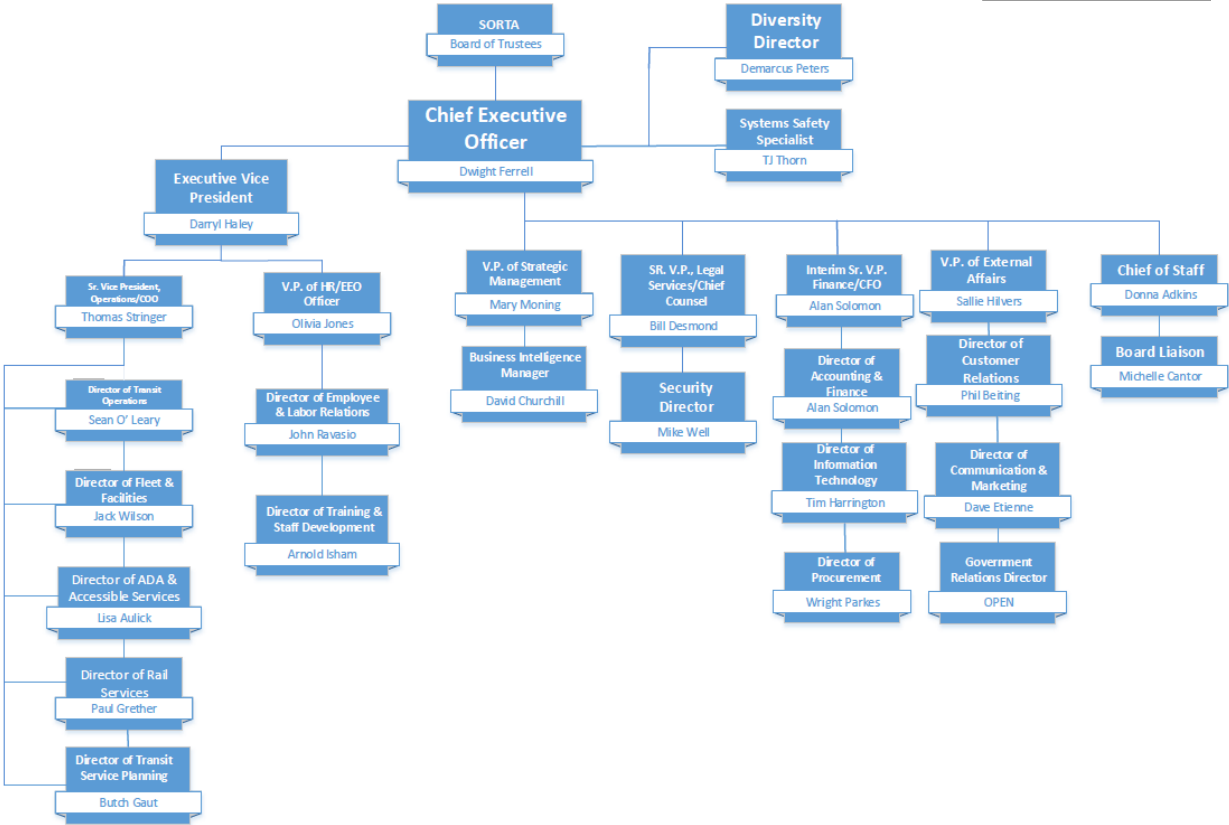
Attachment 7: DBE Regulation, 49 CFR Part 26

Attachment 8: Small Business Element

Attachment 9: DBE Bid Specifications

# Attachment 1: SORTA Organizational Chart

The Director of Diversity and Inclusion is designated as the DBELO and reports directly to CEO.



## **Attachment 2: DBE Directory**

Please access the following link for the Ohio Department of Transportation DBE Directory:

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

**Attachment 3  
Monitoring and Enforcement Mechanisms**



**OFFICE OF DIVERSITY AND INCLUSION**

**DISADVANTAGED BUSINESS ENTERPRISE**

**ONSITE CONTRACT MONITORING AND COMPLIANCE REVIEW PROCEDURES  
FOR CONSTRUCTION**

**AND**

**NON-CONSTRUCTION CONTRACTS (Professional Services)**



November 2016

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SECTION 2	References
SECTION 3	Definitions
SECTION 4	Responsibilities
SECTION 5	Purpose of Reviews
SECTION 6	Frequency of Reviews
SECTION 7	Review Procedures

## **EXHIBITS**

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EXHIBIT 1	Disadvantaged Business Enterprise Onsite Contract Monitoring and Compliance Review Report
EXHIBIT 2	Notification of Noncompliance
EXHIBIT 3	Sample Corrective Action Plan

## **SECTION 1 – POLICY**

The Office of Diversity and Inclusion (ODI) will develop, implement and maintain proactive and comprehensive contract compliance monitoring and enforcement procedures for construction and non-construction contracts to ensure that:

- Disadvantaged Business Enterprises (DBE) are employed and compensated as specified on the Schedule of DBE Participation and DBE/prime contractor subcontractor agreements;
- The Prompt Payment provisions are being adhered to by prime contractors unless otherwise specified in subcontractor agreements;
- DBE's firms are not subcontracting out work to non-DBE firms;
- Confirm the validity of North American Industrial Classification Codes (NAICS) assigned to the DBE firm(s) participating on the project; and
- Issues that may result in prime/DBE disputes that may impact the project work schedule are identified.

ODI will identify all instances of noncompliance, and implement timely and effective remedies to address such noncompliance.

## **SECTION 2 – REFERENCE**

- 49 Code of Federal Regulations, Part 26.37(b)

### Summary of Reference

The Southwest Ohio Regional Transit Authority (SORTA) certifies that it will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.37(b):

1. SORTA 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. SORTA will consider similar action under our own legal authorities, including responsibility determinations in future contracts. SORTA will utilize 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. SORTA 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 at a minimum of once per quarter utilizing the "Onsite Contract Monitoring and Compliance Review for Construction and Non-Construction Contracts" document; and provide written certification that the contracting records have been reviewed and the work sites have been monitored.

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

### **SECTION 3- DEFINITIONS**

**Affirmative Action Plan:** a written positive management tool of a total equal opportunity program indicating the action steps for all organizational levels of a contractor to initiate and measure Equal Opportunity Program progress and effectiveness.

**African Americans:** people whose origins are from any of the Black racial groups of Africa.

**Asian-Indian Americans:** people whose origins are from India, Pakistan, and Bangladesh.

**Asian-Pacific Americans:** people whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, The Philippines, Samoa, Guam, the United States Trust Territories of the Pacific, and the Northern Marianas.

**Beneficiary:** any person or group of people (other than states) entitled to receive benefits, directly or indirectly, from any federally assisted program (e.g., relocatees, impacted citizens, communities, etc.).

**Black American:** (see **African Americans** above.)

**Citizen participation:** an open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

**Compliance:** a satisfactory condition wherein an applicant, recipient, or sub recipient has effectively implemented all of the Title VI requirements; or can demonstrate that every good-faith effort toward achieving this end has been made.

**Contract:** a mutually binding legal relationship, or any modification thereof, that obligates the seller to furnish supplies or services, (including construction) and; obligates that buyer to pay for them. Throughout this document, a lease is considered a contract.

**Contractor:** any person, corporation, partnership, organization, lessee, or incorporated association that participates, through a contract or subcontract, in any program or activity covered by this plan.

**Disadvantaged Business:** a small business concern that is at least 51 % owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are, at least 51%, controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Discrimination:** any intentional or unintentional act (including the failure to act) in which a person in the United States, solely because of race, color, sex, age, disability, or national origin, has been subjected to unequal treatment under any program or activity receiving financial assistance from U.S. DOT.

**Hispanic or Hispanic Americans:** people of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin.

**Laborer or Mechanic:** Includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

**Minority or minority group people:** includes African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans.

**Native Americans:** American Indians, Eskimos, Aleuts, or native Hawaiians.

**Noncompliance:** the condition wherein a recipient has failed to meet prescribed requirements and has shown a lack of good-faith effort in implementing all of the Title VI requirements.

**Non-minority or non-minority group people:** Caucasians

**Recipient:** Any political subdivision or instrumentality thereof; any public or private agency, institution, organization, other entity; or individual, in Ohio, to whom federal assistance is extended, either directly or through another recipient, for any program. Recipient includes any successor, assignee, or transferee thereof. The term **recipient** does not include any ultimate beneficiary under any such program. Examples of recipients include SORTA and ODOT, towns, cities, counties, school districts, or any sub recipient.

## **SECTION 4 - RESPONSIBILITIES**

### **SORTA**

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

## Office of Diversity and Inclusion {ODI}

- Implement the DBE program in accordance with the provisions of 49 CFR Parts 23 and 26.
- Maintain written procedures for the conduct of DBE Contract Compliance Monitoring Reviews for all SORTA contracts with a value of \$100,000 or more and with an assigned DBE goal to ensure compliance with Federal and SORTA policies.
- Provide assistance, as may be reasonable and necessary, to assist prime contractors to comply with or meet contract DBE goal requirements. The assistance may include, but not be limited to, the following upon request:
  - Explaining the DBE program and its requirements
  - Identification of qualified DBEs
  - Resolution of DBE/prime disputes
  - Replacing a DBE on a contract
- Develop and utilize a detailed methodology for establishing appropriate DBE goals for SORTA contracts, and ensure these goals are reflected in SORTA bid and proposal documents.
- Participate in pre-bid/pre-proposal conferences to reiterate the assigned DBE goal and respond to questions from prospective prime contractors regarding the DBE goal or other DBE related issues.
- Review the Schedule of DBE Participation in bid or proposal documents to ensure listed DBE's are currently certified in the areas required to perform on the contract and the stated compensation corresponds to the assigned DBE goal.
- Obtain and review copies of subcontractor agreements between DBE(s) and prime contractors to ensure the Scope of Work (SOW) and compensation correspond to the Schedule of Participation.
- Contact each DBE listed on the Schedule of Participation to confirm their participation on the contract, their proposed SOW and compensation.
- Attend project progress meetings between project engineers and prime contractors
- Obtain quarterly DBE reports from the prime contractor for each project with an assigned DBE goal to ensure a reasonable correlation between the percent of project completion and percent of DBE goal achieved.
- Ensure the availability of any safety equipment or other items or materials that may be required in the conduct of onsite compliance reviews.

- Conduct compliance monitoring visits to each project with an assigned DBE goal and complete the form and checklist at Exhibit 1.
- Advise the Director of Diversity and Inclusion, of all instances of violations or noncompliance with 49 CFR, the DBE/prime contractor subcontractor agreement, or SORTA policies.
- Maintain the technical proficiency of the ODI staff and provide all equipment and other resources required to conduct DBE Compliance Monitoring visits.

#### Contractors/Consultants

- Ensuring DBE's are hired, utilized and compensated as specified on their Schedule of Participation and in the DBE/prime contractor subcontractor agreement.
- Providing the ODI staff their full cooperation and support during DBE Compliance Monitoring Reviews of their SORTA projects.
- Be responsive to ODI on request for confirmation on scheduled participation on a SORTA contract or quarterly report verification.
- The timely submission of all required DBE information or reports as specified in their contracts.
- Promptly advise ODI of any changes to the contract that precipitates a change in either the SOW or compensation for the participating DBE(s).

#### Disadvantage Business Enterprises (DBE)

- Maintain the accuracy of the firm's assigned NAICS Codes and contact information.
- Attend pre-bid conferences on projects of interest to review bid documents and obtain a list of prospective prime contractors.
- Be responsive to ODI on request for confirmation on scheduled participation on a SORTA contract or quarterly report verification.
- Ensure a subcontractor agreement is executed between their company and the prime contractor for participation on all SORTA contracts.
- Being professional, punctual, timely and reliable in performing assigned subcontractor agreements tasks on SORTA contracts.
- Reporting all disputes between their firm and prime contractors on SORTA contracts.

- Reporting instances of non-compliance with the prompt payment provisions.
- Providing ODI a list and copies of subcontractor agreements for all subcontractors they will utilize on a SORTA contract.

#### SORTA Project Managers and Project Engineers

- Provide ODI a current schedule or other document indicating the dates and approximate times the DBE participating on the project will be working at the project site.
- Advise the assigned DBE staff of any issues, disputes, or changes that have a direct impact on the participation of the contracted DBE on this project.
- Provide the assigned DBE staff a copy of all changes to the contract.

### **SECTION 5 - PURPOSE OF REVIEWS**

The purpose of a DBE Onsite Contract Monitoring and Compliance Review is:

1. To ensure that contractors and subcontractors that are performing work on SORTA projects are in compliance with the DBE requirements of their contract with SORTA.
2. To provide early identification of area(s) of noncompliance and the formulation and implementation of appropriate corrective measures.

### **SECTION 6 - FREQUENCY OF REVIEWS**

ODI will ensure that a DBE Onsite Contract Monitoring and Compliance Review is conducted at a minimum of once per quarter or as needed utilizing the “Onsite Contract Monitoring and Compliance Review for Construction and Non-Construction Contracts” document; and provide written certification that the contracting records have been reviewed and the work sites have been monitored.

### **SECTION 7 – COMPLIANCE REVIEW PROCEDURES**

A compliance review consists of the following elements:

1. File Review
2. Notice to Stakeholder
3. Onsite Review
4. Notification of compliance review results
5. Implementation and follow-up on remedies for noncompliance

## File Review

File Reviews are a major component of compliance reviews. By careful and systematic review of the documents and materials in the contract file the DBE staff can review any historical or ongoing DBE participation or performance issues, the results of previous reviews, level of DBE goal achievement and project completion percentage, and any specific areas to focus on during the onsite. The File Review may also include consultations with the Project Manager or Engineer or Contract Administrator as part of a comprehensive effort to determine the most current status of the project and any outstanding or potential issues involving the participating DBE(s) performance prior to conducting the site visit.

## Notice to Stakeholders

The DBE staff will advise the assigned SORTA Project Manager or Project Engineer of all planned project site visits. Such notifications must be in writing and provided no less than five (5) business days prior to the date of the planned site visit.

## Onsite Review

The primary purpose of the onsite visit is to:

- Confirm DBE utilization as specified on the Schedule of Participation and DBE subcontractor agreement;
- Confirm that employees of the DBE firm are in fact performing the SOW in the subcontractor agreement;
- Confirm that the DBE(s) is being compensated as specified on the Schedule of Participation and subcontractor agreement;
- Confirm that the Prompt Payment requirements are being observed by the prime; and
- Identify instances of DBE subcontracting work to non-DBE firms.

The results of the onsite visit will be recorded on the form and checklist at Exhibit 1.

## Notification of Compliance Review Results

If no acts of noncompliance are discovered during the Contract Onsite Monitoring and Compliance Review, within two (2) business days after the completion of the onsite visit, the DBE staff will provide a signed and dated copy of the form and checklist at Exhibit 1 to the Director of Diversity and Inclusion and also place a copy in the contract file.

If during the conduct of the Onsite Monitoring and Compliance Review, the DBE staff discovers acts of noncompliance the staff person will promptly provide a written summary to the Director of Diversity and Inclusion that includes the following:

Subcontract or regulatory violations -



- The specific provisions of 49 CFR or the subcontractor agreement that are being violated;
- A summary of the violations or noncompliance;
- Corrective action taken to date to rectify the violations or noncompliance;
- Impact, if any, on the participation of the DBE on the contract; and
- Recommended corrective action.

Disputes –

- A summary of the facts involving the dispute;
- Actions taken to date to resolve the dispute;
- Impact, if any, of the dispute on the DBE participation on the contract; and
- Recommended corrective action.

The DBE staff will also advise the prime contractor or DBE(s) of their noncompliance using the letter format at Exhibit 2 for any of the following acts of noncompliance:

1. Violations of any provisions of 49 CFR;
2. Violation of any DBE provisions of the prime's contract with SORTA;
3. Discrepancies between the subcontractor agreement between the DBE and prime and work actually being performed by the DBE; and
4. The DBE subcontracting work stated in the SOW of their subcontractor agreement with the prime to non-DBE firms;
5. Allegations or documented instances of nonperformance or substandard performance by the DBE;
6. Failure by the prime to comply with the Prompt Payment guidelines; and
7. Unilateral modification of the DBE and prime subcontractor agreement by the prime that results in the removal of tasks from the DBE's SOW or reductions in DBE compensation.

All compliance conference attendees should at a minimum include the project's participating DBE's, prime contractor, SORTA Project Manager or Engineer, and Contract Administrator/Procurement staff.

Implementation and follow-up on remedies for noncompliance

Within ten (10) business days after receipt of a corrective action plan to remedy noncompliance the DBE staff will conduct a follow-up onsite to verify that the corrective action plan has been implemented and the noncompliance has ceased. The results of the follow-up visit will be recorded on the previously completed Compliance Monitoring Review Onsite Evaluation Checklist for the project.

**EXHIBIT: 1**

**DISADVANTAGED BUSINESS ENTERPRISE  
ONSITE CONTRACT MONITORING AND COMPLIANCE REVIEW  
REPORT  
FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTS**

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CONTRACT NUMBER: \_\_\_\_\_ TERM OF CONTRACT: \_\_\_\_\_

PROJECT NAME/TYPE: \_\_\_\_\_

PROJECT ADDRESS: \_\_\_\_\_

PM/RE: \_\_\_\_\_

PROCUREMENT staff: \_\_\_\_\_

DATE OF REVIEW \_\_\_\_\_ TIME \_\_\_\_\_ DBE staff: \_\_\_\_\_

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PRIME CONTRACTOR: \_\_\_\_\_

POC AT SITE: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

POC TITLE: \_\_\_\_\_

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DBE SUBCONTRACTOR: \_\_\_\_\_

ONSITE POC : \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

DBE START DATE: \_\_\_\_\_ DBE ENDING DATE: \_\_\_\_\_

SCOPE OF WORK: \_\_\_\_\_ NUMBER OF DBE CREW MEMBERS: \_\_\_\_\_

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SUBCONTRACTORS HIRED BY DBE AND WORK BEING PERFORMED:

\_\_\_\_\_  
\_\_\_\_\_

**ONSITE CONTRACT MONITORING AND COMPLIANCE REVIEW  
ONSITE EVALUATION CHECKLIST  
FOR CONSTRUCTION AND NON-CONSTRUCTION CONTRACTS**

EVALUATED ITEMS	YES	NO	COMMENTS
Are the DBE(s) specified on the Schedule of participation submitted by the prime for the project present and performing work at the job site?			
Are DBE's work tasks clearly specified in a written subcontractor agreement between the prime/JV and DBE?			
Is the DBE performing work tasks as specified in the prime's subcontractor agreement with the DBE(s)?			
Did the DBE confirm that their compensation is consistent with the commitment made by the prime on the Schedule of participation and in their subcontractor agreement with the DBE?			
Have changes made to prime's work tasks and affecting the DBE's scope of work and/or compensation been formalized in a change order?			
Are prime and DBE aware that all problems or issues related to DBE performance must also be reported to ODI?			
Are there clearly defined lines of communications between the DBE and prime to facilitate the resolution of problems?			
Does available information or documentation indicate that contractor is in compliance with Prompt Payment Rule?			
Has the DBE contracted with other subcontractors to perform all or a portion of the work assigned to them by the prime contractor?			
EEO Poster displayed in a common area?			
Does signed subcontract agreement have non-discrimination clause, prompt payment clause, termination clause, start and end date?			
If greater than 50 employees, does prime have AAP? If less than 50 employees, provide non-discrimination statement.			

**Follow-Up Visit: Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Results:**

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**Follow-Up Visit: Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Results:**

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**CERTIFICATION**

The Southwest Ohio Regional Transit Authority has taken the following monitoring and enforcement measures to ensure compliance with 49 CFR Part 26.37.

The undersigned hereby certify that an onsite contract monitoring and compliance review onsite evaluation for Contract # \_\_\_\_\_ was conducted by a Southwest Ohio Regional Transit Authority representative.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**EXHIBIT 2: NOTIFICATION OF NONCOMPLIANCE**

Send Certified Mail, Return Receipt Requested

Addressee Information

Re: SORTA Project Number:  
Project Name:

Dear [Name of CEO]:

On \_\_\_\_\_, the Office of Diversity and Inclusion (ODI) of the Southwest Ohio Regional Transit Authority (SORTA) conducted a Disadvantaged Business Enterprise (DBE) Onsite Monitoring and Compliance Review for the above referenced project. As a result of this review it is our determination that your company is not in compliance with the provisions of \_\_\_\_\_. The specific deficiencies are listed below:

- 1.
- 2.
- 3.

You are requested to attend a compliance conference on \_\_\_\_\_ in the ODI office located on the 2nd floor of the SORTA Queensgate location, 1401 Bank Street to present a Corrective Actions Plan that will be taken by your firm to correct this noncompliance and a specific timeline for implementing these actions. This plan will be in the format of the attached enclosure. Once accepted by ODI, these actions will constitute a formal and binding “commitment” by your firm that will remain in force for the duration of this contract.

We encourage you to give this matter your immediate attention to facilitate a prompt resolution of this noncompliance. We are available to assist you however we can in bringing this matter to closure. Please contact \_\_\_\_\_ at \_\_\_\_\_ if you have questions regarding this matter.

Sincerely,

Diversity and Inclusion Coordinator

Enclosure

cc:  
Director, Diversity and Inclusion  
Project Manager  
Project Engineer  
Prime Contractor  
Participating DBE(s)

**EXHIBIT 3: CORRECTIVE ACTION PLAN**

Mr. Demarcus Peters, Director  
Office of Diversity and Inclusion  
Southwest Ohio Regional Transit Authority  
1401 Bank Street, 2<sup>nd</sup> floor  
Cincinnati, OH 45214

Re: SORTA Project Number:  
Project Name:

Dear Mr. Peters:

On \_\_\_\_\_ we were advised by the Office of Diversity and Inclusion (ODI) that as a result of a Disadvantaged Business Enterprise (DBE) Compliance Monitoring Review conducted on the above referenced project on \_\_\_\_\_, our firm was found to be in noncompliance with the provisions of \_\_\_\_\_ which are listed below:

- 1.
- 2.
- 3.

We were further advised that we are required to provide a corrective action plan to address each act of noncompliance. Those actions are listed below:

Violation 1:

Corrective Action:

Implementation Date:

Violation 2:

Corrective Action:

Implementation Date:

These actions, collectively, constitute a commitment by \_\_\_\_\_ to cease and not repeat these acts of noncompliance for the duration of this contract.

Sincerely,

## Attachment 4: Goal Setting Methodology

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

1. SORTA's overall goal for the following time period 20\_\_-20\_\_ is the following: \_\_% of the Federal financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$\_\_\_\_\_ is the dollar amount of DOT-assisted contracts that SORTA expects to award during FFY20\_\_. This means that SORTA has set a goal of expending \$\_\_\_\_\_ with DBEs during this fiscal year/project.

#### 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:

The data source or demonstrable evidence used to derive the denominator was:

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 \_\_%.

The data used to determine the adjustment to the base figure was:

The reason we chose to adjust our figure using this data was because:  
From this data, we have adjusted our base figure to:

**Attachment 5: Good Faith Efforts**



## **SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY GOOD FAITH EFFORTS**

In order to evaluate the extent of the meaningful Good Faith Efforts being submitted by a bidder/proposer in satisfaction of the contract requirements, the Authority requires that certain relevant information be provided prior to contract award. This information must be in the form of an affidavit and submitted by the prime contractor. A bidder/proponent must show reasonable good faith efforts to obtain DBE participation. SORTA treats bidder's/proponent's compliance with good faith efforts requirements as a matter of responsibility. Such reasonable efforts may include, but are not limited to, some or all of the following:

- Utilization of the Ohio Unified Certification Program DBE Directory to identify currently certified DBEs: <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>
- Attendance at pre-bid/pre-proposal meetings, advertising and/or written notices;
- Follow-up of initial solicitations of interest by contacting DBE's to determine with certainty whether the DBE's are interested;
- Efforts to provide DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;
- Efforts made to select portions of the work (including, where appropriate, breaking down the contract into economically feasible units) proposed to be performed by DBE's in order to increase the likelihood of achieving the DBE goal;
- Efforts to negotiate with DBE's for specific sub-bids, including at a minimum; the names, addresses, and telephone numbers of DBE's that were contacted;
- A description of the information provided to DBE's regarding the plans and specifications for portions of the work to be performed and;
- A detailed statement of the reasons why additional prospective agreements with DBE's needed to meet the stated goals, were not reached.

### **Administrative Reconsideration**

The bidder/proponent must make a written request for administrative reconsideration five (5) days prior to the award of the contract for lack of good faith efforts. That notice may be sent to:

**c/o Mr. John Ravasio, Esq.  
602 Main Street, Suite 1200  
Cincinnati, OH 45202**

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(title)

duly authorized representative of \_\_\_\_\_.  
(name of firm)

The undersigned does hereby swear that the foregoing statements are true and correct and include all materials and information necessary to identify and explain the efforts put forth to meet the DBE goal requirements of this contract. Further, the undersigned does covenant and agree to provide to SORTA current, complete, and accurate information regarding good faith efforts. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon and for initiating action under federal and state laws concerning false statements.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT AND THAT I AM AUTHORIZED ON BEHALF OF THE ABOVE FIRM TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
*Signature of Authorized Representative(s)*

STATE OF \_\_\_\_\_

COUNTY (CITY) OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared

\_\_\_\_\_,  
know to me to be the person described in the foregoing Affidavit and acknowledge that he/she executed the same in the capacity therein stated and for the purpose therein contained.

In witness thereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
(Notary Public)

My Commission Expires \_\_\_\_\_

(Seal)







## **Attachment 6: Certification Forms**

Please access the following link for the certification applications forms:

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

## **Attachment 7: Regulations: 49 CFR Part 26**

Please access the following link for the Regulations:

<http://www.ecfr.gov/cgi-bin/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>

## **Attachment 8: Small Business Element**

### **Southwest Ohio Regional Transit Authority**

#### **Section 26.39: Small Business Participation - Fostering Small Business Participation**

##### **Small Business Element of Program**

##### **Objectives of the Program**

1. To provide opportunities for small businesses to compete for and participate in all phases of SORTA's contracting activities;
2. To ensure utilization of small businesses in SORTA contracts by eliminating obstacles;
3. To encourage all small businesses to seek work as either a prime or a sub-contractor when qualified and when work is available; and
4. To create formal processes and procedures that adequately and effectively assists in small business participation.

##### **Definition of a Small Business**

In determining whether a firm is eligible to compete as a small business, SORTA defines a small business as any business whose annual gross income averaged over the past three (3) years does not exceed the Small Business Administration's (SBA) size standards as set forth in 13 CFR, Part 121. A size standard is the largest that a firm can be and still qualify as a small business (SBA's size standards by industry amended, 3/12/12).

##### **Strategies**

SORTA will use the following strategy to create contracting opportunities for small businesses:

**Small Business Allocation: Contracts under \$100,000 will be targeted to small business participation.**

##### **Strategic Objective 1:**

Ensure SORTA's contract opportunities are available to small businesses by collaborating across the community and within the SORTA organization to expand opportunities for small businesses.

##### **Strategies**

1. Identification of small businesses for participation;
2. Expand Web-based Presence and Training Opportunities for existing DBEs and small businesses;
3. Provide Public Outreach and Training
4. Enhance Data Integrity, Monitoring and Oversight with technology improvements.

##### **Performance Indicator**

1. Identify the number of contracts awarded to small businesses.



**Strategic Objective 2:**

Create opportunities to grow small businesses in order to assist in job creation.

**Strategies**

1. Develop Collaboration with Technical Assistance providers; and
2. Improve Business outreach and education.

**Performance Indicators**

1. Identify the number of contracts awarded to small businesses; and
2. Identify ways for small businesses to access capital;
3. Identify job opportunities created by small businesses. (EEO reporting)

**Strategic Objective 3:**

Strengthen SORTA's entrepreneurial education, counseling and training resources to help create new businesses and support the needs of existing businesses by successfully focusing on core program resources and ensuring these resources are aligned with the needs expressed by small businesses.

**Strategies**

1. Provide Technical Assistance Programs, in conjunction with community resource partners, which are relevant to small businesses;
2. Minimize insurance risk and bonding barriers

**Performance Indicator**

1. Identify the number of small businesses attending small business events, technical forums, pre-bid conferences and special events.
2. Increase documented strategic partnerships.

**Implementation**

SORTA has incorporated a non-discriminatory small business element to its DBE program, in order to facilitate competition on all procurements by small business concerns:

SORTA has established the following process and procedures to meet its small business element strategy:

1. Small Business Allocation: Contracts under \$100,000:
  - a) Diversity and Inclusion (D&I) staff will create an availability listing of NAICS codes for which small businesses can compete and use this listing to identify small business contract targets for those contracting opportunities that small businesses can compete for.
  - b) D&I staff will review scope of work/task breakdown and estimated costs provided by program offices. On prime contracts not having DBE contract

goals, SORTA will encourage the prime contractor to provide subcontracting opportunities of a size that small businesses, can reasonably perform, rather than self-performing all the work involved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate small business participation, even when the prime contractor might have the ability and otherwise prefer to perform these work items with its own forces.

- c) Contract administrators/buyers are required to obtain when feasible and practical, at least one of three price quotations from an SBE for informal competitive procurements (i.e., other than Invitations for Bids (IFBs) and Request for Proposals (RFPs).
- d) Staff will confirm small business status consistent with SBA size standards.
- e) The Procurement Diversity and Inclusion staff meets routinely to discuss small businesses involvement and encouragement.
- f) Staff interacts on a regular basis with SORTA's Board and Executive staff regarding encouragement of small business participation.
- g) Staff accesses the Ohio small business directory and City of Cincinnati SBE directory to identify potential small businesses participants in each procurement.
- h) Each Purchase Requisition is reviewed by Procurement and D&I for small business participation.
- i) Staff Closely reviews any proposed changes to existing contracts to ensure that small businesses are being given the opportunity to bid on any new work that is out of the scope of the existing contract;
- j) Diversity and Inclusion staff will "track" small business performance via excel spreadsheet, to establish a baseline for possible future FTA reporting mandates.
- k) For efficiency, SORTA is pursuing an acquisition of an automated technology solution to enhance its small business outreach and monitoring. The planned solution includes pre-award small business inclusion and post-award contract administration modules to ensure full utilization of small businesses. The solution will lend to ease of business participation by online tools. Post-award solution will also include prompt payment administration.

## **Accountability/ Counting Participation**

SORTA will seek to implement one or more small business elements on contracting activity; regardless, of the funding source. When a race conscious measure, (such as a contract-specific DBE goal, is placed on a particular contract, SORTA will not set a Small Business target on the same contract. By doing so, SORTA will avoid confusion between DBE and SBE goals in the business community.

SORTA program success will be measured by compiling statistical data that quantifies the number of subcontract awards to small businesses. Although FTA does not currently require project goals for the small business element, SORTA proposes to track small business participation in order to establish baseline information in the event the FTA sets a requirement or goal setting methodology for this program.

SORTA will monitor and review its achievement each year. If targets are achieved, no further action is required. If SORTA does not achieve targets, a corrective action plan will be submitted.

Key Performance Indicators for small business participation efforts are:

1. Number of contracts awarded to small businesses;
2. Dollar amounts of contracts awarded to small businesses;
3. Types of contracts and/or categories of contracts awarded to small businesses
4. Assessment of total dollars and number of contract awards to small businesses as prime contractors;
5. Number of small business events, technical forums and/or special events held to reach small businesses for participation in procurement activities.
6. Record of small business attendance/number of participants at events.

## **Program Oversight/Monitoring & Enforcement**

The Disadvantage Business Enterprise Liaison Officer (DBLEO) has overall program oversight. However, for day to day operations the Diversity and Inclusion Coordinator will be responsible for program implementation of the small business element.

## **Attachment 9: DBE Bid Specifications**