



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

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

**The DBE program is intended  
to ensure a “level playing field” and foster equal opportunity for  
small businesses pursuant to the Department of Transportation’s 49 CFR Part 26**

**Submitted by:**

**SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY  
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# 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.

The Senior Manager of Vendor Diversity and Inclusion has been designated as the DBE Liaison Officer. In that capacity, the Senior Manager of Vendor Diversity and Inclusion 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 Chief Executive Officer



Date:

5-31-24

## **SUBPART A – GENERAL REQUIREMENTS**

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

The objective of the Southwest Ohio Regional Transit Authority (SORTA) Disadvantaged Business Enterprise Program is oriented toward increasing competition and generating economic efficiencies in contract activities. In addition, the objectives are designed to maximize diversity and inclusion by expanding the pool of small businesses to meet SORTA's contract needs. Specifically, the program objectives are:

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.

## **GENERAL REQUIREMENTS**

### **Section 26.3: Applicability**

SORTA is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Public Law 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.

As a recipient of these federal funds, SORTA is required to administer a DBE Program in compliance with all laws, regulations, executive orders and guidance.

## **Section 26.5: Definitions**

In accordance with Section 26.5 of 49 CFR, SORTA has adopted the definition of terms that follow for the effective implementation of the DBE program.

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
  1. One concern controls or has the power to control the other; or
  2. A third party or parties controls or has the power to control both; or
  3. An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.)

**Compliance** means that a recipient has correctly implemented the requirements of this part.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

**Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern --

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**FTA Tier I recipient** means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**Indian tribe or Native American Tribe** means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such native Hawaiians.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Notice of decision or NOD** means determination that denies a firm's application or decertifies a DBE.

**Notice of intent or NOI** means recipients letter informing a DBE of a suspension or proposed decertification. **Operating Administration or OA** means any of the following parts of the DOT: the Federal Aviation Administration), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

**Personal Net Worth** means the net value of an individual's reportable assets and liabilities, per the calculation rules in § 26.68

**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: [www.census.gov/naics/](http://www.census.gov/naics/).

**Primary recipient** means a recipient which DOT financially assists who passes some or all of its grant funds on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

**Race-conscious measure or program** is one that is focused specifically on assisting only DBEs, including women-owned DBEs.



**Race-neutral measure or program** is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

**Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Secretary** means the Secretary of Transportation or his/her designee.

**Small Business Administration or SBA** means the United States Small Business Administration.

**Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is --

- 1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- 2) Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
  - i. **"Black Americans,"** which includes persons having origins in any of the Black racial groups of Africa;
  - ii. **"Hispanic Americans,"** which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - iii. **"Native Americans,"** which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - iv. **"Asian-Pacific Americans,"** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

- v. **"Subcontinent Asian Americans,"** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri- Lanka;
- vi. **Women;**
- vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- viii. **Tribally owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

## **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 the electronic Uniform Report of DBE Awards or Commitments and Payments which is submitted in TRAMS (Attachment A). SORTA will report this information on a semi-annual basis on June 1st and December 1st. SORTA will continue to provide data about its DBE program as directed by DOT Operating Administrations.

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

SORTA will maintain a bidders list with information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of the bidders list information is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally assisted contracts for use in helping set overall goals, and to provide the USDOT/FTA with data for evaluating the extent to which the objectives are being achieved. The following information from all DBE and non-DBEs who bid as prime contractors and subcontractors on each federally assisted contract will be collected:

- 1) Firm Name
- 2) Firm address, including ZIP code
- 3) Firm's status as a DBE or Non-DBE
- 4) Race and gender information for the firm's majority owner
- 5) NAICS code applicable to each scope of work the firm sought to perform in its bid
- 6) Age of the firm; and
- 7) The annual gross receipts of the firm. This will be obtained by asking each firm to indicate into what gross receipts bracket they fit.

SORTA captures this information from our vendor information form included in our solicitations that must be submitted with the bid or initial response to negotiated procurements (Attachment B).

This data will be submitted in USDOT's designated system no later than December 1<sup>st</sup> following the fiscal year in which the relevant contract was awarded. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

SORTA will submit a report on DBE participation to the concerned Operating Administration containing all the information described in the Uniform Report. The report will be submitted at the intervals required by the Federal Transit Administration. SORTA will also provide DBE program data to FTA as directed.

### **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**

SORTA is an FTA Tier I recipient who receives funding for planning, capital and/or operating assistance and awards prime contracts (excluding transit vehicle purchases), the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year. As such, SORTA will continue to maintain and carry out the program purpose in accordance with part 26 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)**

With respect to the DBE Program, ultimate responsibility for implementation belongs to the SORTA Chief Executive Officer/General Manager. The Chief Executive Officer/General Manager has been directed by the SORTA Board of Directors to delegate implementation. As a result, Tara Walker, the Senior Manager of Vendor Diversity and Inclusion, located at, 1401-B Bank Street, Cincinnati, Ohio 45202, is the Disadvantaged Business Enterprise Liaison Officer (DBELO). She can be reached at 513-632-7614. Ms. Walker's email address is [twalker@go-metro.com](mailto:twalker@go-metro.com). She serves as the organization's DBE Liaison Officer and reports directly to the Chief Executive Officer/General Manager.

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.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes 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. Participates in pre-bid meetings
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Ohio.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the SORTA's updated directory on certified DBEs.

An organization chart displaying the DBELO's position in the organization is found in (Attachment C) to this program.

#### **Diversity and Inclusion Office Staffing:**

The DBELO, Tara Walker (Senior Manager of Vendor Diversity and Inclusion) will be assisted by at least (1) one direct report. The DBE Administrator reports to and supports the Senior Manager of Vendor Diversity and Inclusion.

The DBE Administrator monitors overall DBE contractor compliance and supports the DBE goal and related provisions at the contractor level. The DBE Administrator handles the day-to-day administrative aspects of managing the DBE program. The duties are supportive of the duties of the DBE Liaison Officer. The DBE Administrator performs the following functions:

- Assists in completing the biannual DBE Uniform Report.
- Assists in contract goal setting.
- Assists in contract monitoring and oversight for compliance.
- Participates in pre-bid meetings.
- Performs outreach.
- Attends and assists in coordinating SORTA trainings for DBEs and outreach events.
- Provides DBEs with technical assistance.
- Maintains SORTA's bidders list.

### **Staffing Coordination:**

In executing the DBE Program, the DBE Liaison Officer is provided regular support by procurement staff and staff in other departments across the organization.

Close coordination is maintained between the Diversity and Inclusion staff and Procurement Specialists to ensure that all known socially, and economically disadvantaged firms receive copies of bid solicitations, requests for proposals, debriefings, opportunities to review similar contracts, etc.

Additionally, close coordination is maintained with the Vendor Performance team once the contract has been awarded. The Vendor Performance team keeps in regular contact with the Vendor Diversity and Inclusion team to ensure that staff is notified when proposed changes arise. This assists Vendor Diversity and Inclusion staff in contract monitoring and compliance.

The Vendor Diversity and Inclusion team also coordinates with project managers across the organization. Project managers assist Vendor Diversity and Inclusion staff during goal setting to help determine what types of subcontracting opportunities exist. Additionally, project managers keep in close contact during the performance of the contract so that staff is fully aware of any changes or issues.

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

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.

The Federal Deposit Insurance Corporation (FDIC) publishes a Minority Depository Institutions (MDIs) Report that lists the current MDIs across the United States that registered with the FDIC. SORTA will conduct an annual review of FDIC MDI Report, assess the new MDIs accessible within the State of Ohio, and her neighboring states. An up-to-date listing of MDIs is included as an attachment to this plan (Attachment D). 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. A listing of said institutions, contact information, and the services they provide are afforded to firms under contract with the Authority for their reference.

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

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

It is the policy of SORTA that prompt payment is made to all subcontractors. Each subcontract the prime contractor signs with a subcontractor; and each lower tier contract the subcontractor signs with a lower tier contractor must include the following clause:

For construction work, the following clause must be included:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the prime contract receives from SORTA. This contractual obligation applies to and must be placed in all subcontractor and supplier contracts that it enters and further requires that all subcontractor and suppliers place the same payment obligation in each of their lower tier contracts.

Contractor agrees to release any retainage held, as set forth in any subcontractor or supplier agreement, thirty (30) days after the work is satisfactorily completed. For the purposes of this section, satisfactorily completed will be interpreted as when the subcontractor has completed all physical work and submitted any necessary documentation required by the specifications and SORTA. No subcontract provision shall permit the Contractor to delay subcontractor's retainage payments until the Project's final payment.

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.

If the Contractor, subcontractors, or supplier subject to this provision fail to comply with these requirements, the offending party shall pay, in addition to the payment due, interest to be determined by SORTA, per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from SORTA and ending on the date of full payment of the payment due plus interest.

interest to be determined by SORTA, per annum of the payment due, beginning on the eleventh Calendar Day following the receipt of payment from SORTA and ending on the date of full payment of the payment due plus interest.

Repeated failures to pay subcontractors and suppliers timely pursuant to this section will result in a finding by SORTA that the Contractor is in breach of Contract and subject to all legal consequences that such a finding entails.

For consultancy work, the following clause must be included:

The consultant shall pay each subconsultant within thirty (30) calendar days after receipt of payment from SORTA for services performed and invoiced by the subconsultant. The consultant shall also require that this contractual obligation be placed in all subconsultant contracts that it enters and further require that all subconsultants place the same payment obligation in each of their lower tier contracts. This contractual obligation applies to and must be placed in all subconsultant contracts that it enters and further requires that all subconsultants place the same payment obligation in each of their lower tier contracts. 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.

If the invoice submitted to the consultant (or subconsultant) contains a defect or impropriety, the consultant shall send written notification to the firm within fifteen days after receipt of the invoice. The notice shall contain a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. If the consultant sends such written notification to the firm, the required payment date shall be thirty days after the consultant receives a proper invoice.



A consultant that fails to make payment for the services by the required payment date shall pay an interest charge to the subconsultant. The interest charge on amounts due shall be paid to the subconsultant for the period beginning on the day after the required payment date and ending on the day that payment of the amount due is made. The amount of the interest charge that remains unpaid at the end of any thirty-day period after the required payment date shall be added to the principal amount of the debt and thereafter the interest charge shall accrue on the principal amount of the debt plus the added interest charge. The interest charge shall be at the rate per calendar month that equals one-twelfth of the rate per annum prescribed by section 5703.47 of the Revised Code for the calendar year that includes the month for which the interest charge accrues.

Repeated failures to pay subconsultants timely pursuant to this section will result in a finding that the consultant is in breach of contract and subject to all legal consequences that such a finding entails.

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

The prime contractor agrees to return retainage payments to each subcontractor within ten (10) days after the subcontractor's work is satisfactorily completed. The contractor shall not delay or postpone payment to a subcontractor without prior written approval from Tara Walker, the Senior Manager of Vendor Diversity and Inclusion (DBELO). This clause applies to both DBE and non-DBE subcontracts.

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

#### **26.29(d): Prompt Payment Monitoring and Enforcement Mechanisms**

SORTA has established monitoring and verification of payroll information for contractors and subcontractors. SORTA's DBELO and supporting staff verify that subcontractors are being paid promptly and return on retainage is occurring. SORTA uses software to track prompt payment and retainage compliance. The software allows the prime and subcontractors to enter in and verify payments and release of retainage. The DBELO and supporting staff monitor submissions to ensure compliance. The software will also notify staff of inactivity or noncompliance with prompt payment requirements.

In the event SORTA is notified of a lack of timely payments, SORTA will initiate an investigation to determine the cause of the lack of timely payment. Repeated violations

may impact the prime or subcontractor's ability to secure future work with SORTA. If, based on the results of any investigation, a contractor is determined to be noncompliant with the above policies, the contractor may be subject to sanctions.

SORTA, at its sole discretion, may use one of the following methods to ensure compliance with 26.29:

(1) SORTA may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) SORTA may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) SORTA may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

### **Section 26.31: DBE Directory**

SORTA is a member of the Unified Certification Program (UCP) administered by the Ohio Department of Transportation (ODOT) and uses ODOT's online DBE directory. ODOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's pertinent information, inclusive of firm name, address, phone number, email address, ethnic group of primary ownership, certification status, original certification date, firm website, and the approved NAICS Code(s) and corresponding NAICS Code descriptors defining the type of work the firm has been certified to perform as an eligible DBE. The Directory is available at [www.ohioucp.org](http://www.ohioucp.org) (Click Ohio Unified DBE Directory).

The above site will be used to retrieve the most recent certification information. ODOT updates the directory in real time. SORTA's website provides a link to the Directory for internal staff to use and for interested persons to find certified DBEs. ([www.go-metro.com](http://www.go-metro.com))

### **Section 26.33: Overconcentration**

SORTA has not identified that overconcentration exists in the types of work that DBEs perform. If in the future 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. Once approved, the measures become part of SORTA's DBE program. Such measures may include use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which SORTA has determined that non-DBEs are unduly burdened. SORTA may also consider varying use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

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

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, U.S. Small Business Transportation Resource Center, the Chambers of Commerce serving socially and economically disadvantaged businesses in the SORTA service area, and the Ohio Minority Supplier Development Council.

Finally, SORTA will also engage in the following ways:

1. The Vendor Diversity and Inclusion Team will explain "How to do business with SORTA."
2. We 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, we will arrange with the procurement department for the firm to review the previously let contract for informational purposes.

Business development efforts will be ongoing to ensure that DBEs, minority, women and socially and economically disadvantaged businesses are afforded every opportunity to comprehensively develop their business.

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

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

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. 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. (Attachment E)
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is 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 as stated and outlined above.

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.

The Vendor Diversity and Inclusion Team will monitor the work performed and the dollar amount paid to subcontractors (DBE and non-DBE) for the life of the contract. After the contractor has been issued an administrative notice to proceed, the Vendor Diversity and Inclusion team will request the prime contractor to submit progress reports throughout the life of the contract. Reports are submitted through SORTA's diversity compliance software, Prism, for review. Prism will contain the names of subcontractors, both DBE and non-DBE, the amount, and their scope of work. The prime contractor will enter payment information (invoices/dates/amounts) and upload certified payrolls on a quarterly basis.

Likewise, the subcontractors must review the data submitted by the prime and verify invoice payment via the software. Should compliance issues arise, Prism has the capability to notify SORTA staff and the prime contractor. SORTA staff, however, will

review payment information regularly to ensure compliance and identify irregularities, should any arise, as a secondary measure of review and recordkeeping.

SORTA will require contractors to maintain records and documents of payments to all subcontractors 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 subcontractor.

With respect to achieving SORTA's overall goal, SORTA will use a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether SORTA's current implementation of contract goals is projected to be sufficient to meet the annual goal. This mechanism will inform SORTA's decisions to implement goals on contracts to be advertised according to the established contract goal-setting process.

SORTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award for frequent comparisons of payments made to a listed DBE relative to the progress of work. This includes payments for this work to the prime contractor to determine whether the contractor is on track in meeting its DBE commitment and whether any projected shortfall exists which requires that the prime contractor document good faith efforts to meet the contract goal pursuant to § 26.53(g). The running tally ensures that, throughout the life of the contract, SORTA will know whether the DBE is performing the work to which the prime contractor has committed; whether payments to all subcontractors (DBEs and non-DBEs) are timely; and whether DBEs are performing a commercially useful function. 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. All personnel involved in a SORTA's DBE program, including the DBE Liaison Officer (DBELO), must facilitate implementation of the running tally requirement.

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

SORTA has established a Small Business Enterprise (SBE) Program in order to continuously meet the maximum achievable portion of its DBE goal through race-neutral means (see Attachment F). To ensure that the maximum achievable portion of the overall DBE goal is met by using race-neutral means, SORTA assesses the latest availability data and takes measures to facilitate competition and small business participation on contracts.

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

Before establishing the overall goal each year, SORTA will consult with the Ohio Minority Supplier Development Council, The Women's Business Enterprise Council, the Small Business Administration, general contractors and peer agencies to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, and the effects of discrimination on opportunities for DBEs. SORTA will also utilize U.S. census data; the City of Cincinnati and its Disparity Study Data; the Ohio Department of Transportation and its Ohio Uniform Certification Program DBE Directory and Disparity Study Data; to further analyze the effects of discrimination. SORTA's efforts to establish a level playing field for the participation of DBEs will also 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.

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

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 1401-B Bank St, Cincinnati, OH 45214 for 30 days following the date of the notice, and informing the public that we will accept comments on the goals for 30 days from the date of the notice. Notices may be published on the SORTA website and/or local publications, which include publications targeted at minority groups. The goal is also shared with the minority chambers in Cincinnati. We will issue this notice and allow for the 30 day public comment and inspection prior to the submission date of August 1<sup>st</sup> 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 at least one of 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.

### **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. 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.

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;
- Participate in, and facilitate small business contracting events; 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.
- Refer small businesses to resource agencies to assist with financial constraints and options, technical support and certifications.
- Conduct trainings for "How to do business with Metro", proposal writing, cost estimating and resource finding.
- Partner with local, state, and national resources such as the City of Cincinnati and The Small Business Administration to hold and participate in events concerning small and disadvantaged businesses.

Until additional baseline information is obtained, SORTA will meet its overall three year goal of 8.5% for contracting opportunities in the following manner:

1% - percent by race neutral means

7.5% percent by race conscious means

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

SORTA understands the following:

- SORTA cannot be penalized, or treated by the FTA as being in noncompliance with this rule, because our DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith;
- If SORTA does not have an approved DBE program or overall goal, or if SORTA fails to implement a program in good faith, we are in non-compliance with 26.47.



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 must do the following in order to be regarded by the FTA as implementing the DBE program in good faith:

1. Analyze, in detail, the reasons for the difference between the overall goal and the actual awards/commitments in the fiscal year;
2. Establish specific steps and milestones to correct the problems we have identified in the analysis and enable SORTA to fully meet the goal for the new fiscal year.

#### **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. 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.  
(Attachment H)

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**

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.

SORTA will use contract goals to meet any portion of the overall goal 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 (exclusive of transit vehicle manufacturers).

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.

For achieving overall goals, SORTA will use a running tally providing for frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards. This will enable the SORTA to determine whether its current implementation of race-conscious contract goals is projected to be sufficient to meet its annual goal. The running tally will also enable SORTA to make informed decisions concerning goals to be advertised according to SORTA's established contract goal-setting process.

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

### **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 only award the contract to a bidder/offeror who

makes good faith efforts to meet it. 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 that it made adequate good faith efforts to meet the goal, even though it failed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, SORTA will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal.

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

When SORTA establishes a DBE contract goal, SORTA will only award a contract to a bidder/offeror who makes good faith efforts to meet it. The bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, SORTA will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal.

The Senior Manager of Vendor Diversity and Inclusion (DBELO), Tara Walker, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible.

SORTA will ensure that all information is complete, accurate and adequately documents the bidder/offer's good faith efforts before SORTA commits to the performance of the contract by the bidder/offeror. (Attachment I)

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

SORTA treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility. Award of the contract will be conditioned on meeting the requirements of this section. 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
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 contracts provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of paragraph (c)(1) of this section.
6. If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

At SORTA's discretion, the bidder/offeror must present the information required by this section as a matter of responsiveness, or with initial proposals under contract negotiation procedures, or no later than 5 days after the bid opening as a matter of responsibility.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph(b)(2) of this section before the final selection for the contract is made. This does not apply to a design-build procurement, which must follow the provisions in subsection(e) of this section.

#### **26.53(c): Adequate Documentation of Good Faith Efforts**

SORTA will make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

For each DBE listed as a regular dealer or distributor SORTA will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in § 26.55(e)(2)(iv)(A), (B), and (C) and (e)(3) under the contract at issue. SORTA's preliminary determination shall be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, SORTA is required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal. SORTA will assess eligibility utilizing the DBE Regular Dealer/Distributor Affirmation Form (Attachment J). The form will be a matter of responsiveness to the contract at hand.

### **26.53(d): Administrative Reconsideration**

If SORTA determines that the apparent successful bidder/offeror has failed to meet the requirements demonstrating Good Faith Efforts (GFE), SORTA, before awarding the contract, will provide the bidder/offeror an opportunity for 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: SORTA, Attention: Mr. Andrew Aiello, 525 Main St, Suite 500 Cincinnati, Ohio 45202, [aaaiello@go-metro.com](mailto:aaaiello@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 so. SORTA 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(e): Design-Build Contracts – DBE Open Ended DBE Performance Plan**

In a design-build contracting situation, in which SORTA solicits proposals to design and build a project with minimal-project details at time of letting, SORTA may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in section (b) of this plan that applies to design-bid-build contracts. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed.

Once the design-build contract is awarded, SORTA will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. SORTA and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, as long as the design-builder continues to use good faith efforts to meet the goal.

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

SORTA requires that a prime contractor not terminate a DBE or any portion of its work (or an approved substitute DBE firm) listed in the DBE Participation Plan form without SORTA's prior written consent, unless SORTA causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. SORTA will provide written consent only if SORTA agrees, for reasons that SORTA deems acceptable in a concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. Good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable State law;
6. SORTA has determined that the listed DBE subcontractor is not a responsible contractor.
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
8. The listed DBE is ineligible to receive DBE credit for the type of work required.
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
10. Other documented good cause that SORTA determines compels the termination of the DBE subcontractor.

Before the prime transmits its request to SORTA to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to SORTA sent concurrently, of its intent to request to terminate and the reason for the proposed request. The prime contractor's written notice must give the DBE 5 days to respond, advising SORTA and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract/or portion thereof and why the request to terminate should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), SORTA may provide a response period shorter than 5 days. The provisions of this section also apply to pre-award deletions or changes to DBEs, or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or any portion of its work is terminated by the prime contractor, or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. SORTA will request the contractor amend and provide new copies of subcontracts, the DBE Participation Plan, Letter of Commitment, and the good faith efforts documentation (if necessary). The contractor must submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the contractor, and SORTA will provide a written determination to the contractor stating whether good faith efforts have been demonstrated.

Failure by the contractor to comply with the is a material breach of the contract and may result in the termination of the contract or such other remedies set forth that SORTA deems appropriate.

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

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

- (A) When a DBE participates on a contract, SORTA will count only the value of the  
Work actually performed by the DBE toward the goal.
- 1. SORTA will count the entire amount of that portion of a construction contract 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; and include supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

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 SORTA determines the fee 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 will 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.
- (B) 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.
- (C) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. SORTA will determine if a contractor is performing a commercially useful function by considering the following:
1. 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 (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, we will evaluate 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 other relevant factors. SORTA will also conduct onsite reviews to further ensure that the DBE is performing a commercially useful function (Attachment K)
  2. 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 obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, we will examine similar transactions, particularly those in which DBEs do not participate.
  3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis



of normal industry practice for the type of work involved, we will presume that it is not performing a commercially useful function.

4. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. We will determine if the evidence presented provides proof to the extent that we rescind our original decision. A reversal decision will only be made when it is determined that the firm is performing a commercially useful function given the type of work involved based on prevailing and normal industry practices.

(D) In accordance with 49 CFR Part 26, SORTA's decisions on commercially useful function matters is subject to review by FTA but will not be administratively appealable to DOT. Because of special circumstances, SORTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If SORTA chooses this approach, SORTA will obtain written consent from the appropriate DOT operating administration.
6. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

7. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- (E) SORTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- 1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
  - 2) For purposes of this paragraph, a manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
  - 3) A regular dealer is a firm that owns (or leases), operates a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.
    - A) To be a regular dealer, 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 as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a 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.
  - 4) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, SORTA will count the

entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. SORTA will count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- 5) If a business engages in the regular sale or lease of the items specified by a contract, it is considered a "distributor". Distributors limits the credit that can be obtained for many drop-shipped goods to 40 percent, so long as the DBE distributor assumes all risk for loss or damage during transportation, evinced by the terms of the purchase order or a bill of lading from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items to the DBE distributor. Where a distributor "drop ships" materials without assuming risk or does not operate in accordance with its distributorship agreement, credit is limited to fees or commissions.

(F) Decertification effects on contract and overall goals and DBE participation

- 1) If a prime contractor has made a commitment to use the decertified firm, but a subcontract has not been executed before the certifier issues the notice of decision, the certified firm does not count toward the contract goal. SORTA will direct the prime contractor to meet the contract goal with an eligible DBE or demonstrate the certifier that it has made good faith efforts to do so.
- 2) If commitment has been made by SORTA to use a DBE prime contractor, but a contract has not been executed before a decertification notice provided, the decertified firm does not count toward SORTA's overall DBE goal.
- 3) If a prime contractor has executed a subcontract with the firm before the certifier has notified the firm of its decertification, the prime contractor may continue to use the firm and may continue to receive credit toward the DBE goal for the firm's work. In this case, however, the prime contractor may not extend or add work to the contract after the firm was notified of its decertification without prior written consent from the recipient.
- 4) If a prime contractor has executed a subcontract with the firm before the certifier has notified the firm of its decertification, the prime contractor may continue to use the firm (as set forth in paragraph (i)(3) of 26.87); however, the portion of the decertified firm's continued performance of the contract must not count toward the recipient's overall goal.

- 5) If SORTA executed a prime contract with a DBE that was later decertified, the portion of the decertified firm's performance of the contract remaining after the certifier issued the notice of its decertification must not count toward an overall goal, but the DBE's performance of the contract may continue to count toward satisfying the contract goal.
- 6) The following exceptions apply:
  - a. If a certifier decertifies a firm solely because it exceeds the business size standard during the performance of the contract, SORTA will continue to count the portion of the decertified firm's performance of the contract remaining after it issued the notice of its decertification toward SORTA's overall goal as well as toward the contract goals.
  - b. If the certifier decertifies the DBE because it was acquired by or merged with a non-DBE, SORTA will not continue to count the portion of the decertified firm's performance on the contract remaining after the certifier decertified it toward either the contract goal or the overall goal, even if a prime contractor has executed a subcontract with the firm or the recipient has executed a prime contract with the DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor's ability to meet the contract goal, SORTA will direct the prime contractor to subcontract to an eligible DBE to the extent needed to meet the contract goal or demonstrate to SORTA that it has made good faith efforts to do so.

## **SUBPARTS D & E– CERTIFICATION**

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

ODOT is a representative of, and is responsible for oversight of, the Ohio Unified Certification Program (Ohio UCP), which is governed by a memorandum of understanding (UCP MOU), to which SORTA is a part of. The UCP MOU specifies the UCP will follow all certification procedures and standards of 49 CFR Part 26; the UCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations; and the UCP shall implement USDOT directives and guidance concerning certification matters. SORTA is a member of the Unified Certification Program (UCP) administered by the Ohio Department of Transportation (ODOT). The UCP MOU also commits recipients to ensuring the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Part 26. The Ohio UCP makes all certification decisions on behalf of all USDOT recipients in Ohio with respect to participation in the USDOT DBE Program. Certification decisions by the Ohio

UCP are binding on all USDOT recipients within Ohio. The Ohio UCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in Ohio. All obligations of recipients with respect to certification and nondiscrimination are carried out by the Ohio UCP, which complies with the certification and nondiscrimination requirements of 49 CFR Part 26.

SORTA is not a certifying agency member currently. The Ohio UCP will meet all the requirements of this section. SORTA will use and count for DBE credit only those DBE firms certified by the ODOT, which can be contacted at the following:

Ohio Unified Certification Program  
c/o Office of Small and Disadvantaged Business Enterprise  
Ohio Department of Transportation  
1980 West Broad Street, MS 3270  
Columbus, Ohio 43223  
(614) 466-7170  
<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe#page=1>

The memorandum of understanding is contained within this document as **Attachment L**

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

The DBE certification process allows small businesses, which are independently owned and controlled by one or more socially and economically disadvantaged individuals, admittance into the DBE Program. DBE certification standards and procedures include collecting information, applying the criteria for eligibility, providing a DBE eligibility determination, and implementing an appeal process for denials and de-certifications. ODOT is a UCP representative in accordance with 49 CFR Part 26 and makes certifications determinations based on all the requirements of Part 26 Subpart D – Certification Standards and Subpart E – Certification Procedures.

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 utilized on any DOT-assisted contract.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109: Information, Confidentiality, Cooperation**

SORTA 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 (Federal Freedom of Information and Privacy Acts (5 USC 552 and 552a) and Ohio Revised Code Chapter 149.43). 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, SORTA will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information.

SORTA understands that we are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against SORTA (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

SORTA will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing. Violation of this prohibition places SORTA in noncompliance with § 26.109.

## **ATTACHMENTS**

Attachment A: Semi Annual DBE Report  
Attachment B: Vendor Information Page  
Attachment C: SORTA Organization Chart  
Attachment D: FDIC MDI  
Attachment E: General Terms and Conditions  
Attachment F: SORTA Small Business Element  
Attachment G: 2024-2026 DBE Goal Methodology  
Attachment H: TVM Certification of Compliance Form  
Attachment I: Good Faith Efforts Form  
Attachment J: DBE Regular Dealer-Distributor Form  
Attachment K: Onsite Contract Monitoring – CUF Form  
Attachment L: ODOT UCP MOU

# Attachment A

## General Reporting

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS									
**Please refer to the Instructions sheet for directions on filling out this form**									
1	Submitted to (check only one):		<input type="checkbox"/> FHWA <input type="checkbox"/> FAA <input checked="" type="checkbox"/> FTA-Recipient 2020						
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):								
3	Federal fiscal year in which reporting period falls:		4. Date This Report Submitted:						
5	Reporting Period		Report due June 1 (for period Oct. 1-Mar. 31)			Report due Dec. 1 (for period April 1-Sept 30)		FAA annual report due Dec. 1	
6	Name and address of Recipient:		Southwest Ohio Regional Transit Authority; 525 Vine St, Suite 500, Cincinnati, OH 45202						
7	Annual DBE Goal(s): Race Conscious Projection: 7.5%		Race Neutral Projection: 1.0%		Goal: 8.5%				

Awards/Commitments this Reporting Period										
		A	B	C	D	E	F	G	H	I
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
	8 Prime contracts awarded this period							\$ -	0	#DIV/0!
	9 Subcontracts awarded/committed this period					\$ -	0			#DIV/0!
	10 TOTAL			\$ -	0	\$ -	0	\$ -	0	#DIV/0!

BREAKDOWN BY ETHNICITY & GENDER						
		Contracts Awarded to DBEs this Period				
		A	B	C	D	E
		Total to DBE (dollar amount)			Total to DBE (number)	
		Women	Men	Total	Women	Men
11	Black American	\$ -	\$ -	\$ -	0	0
12	Hispanic American	\$ -	\$ -	\$ -	0	0
13	Native American	\$ -	\$ -	\$ -	0	0
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0
16	Non-Minority	\$ -	\$ -	\$ -	0	0
17	TOTAL	\$ -	\$ -	\$ -	0	0

Payments Made this Period						
		A	B	C	D	E
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid
						Percent to DBEs
18	Prime and sub contracts currently in progress					#DIV/0!

		A	B	C	D
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)
					Percent to DBEs
19	Race Conscious		\$ -	\$ -	\$ -
20	Race Neutral				\$ -
21	Totals				\$ -
22	Submitted By: Tara Walker		24. Signature: Tara Walker		25. Phone Number: 513-682-7614



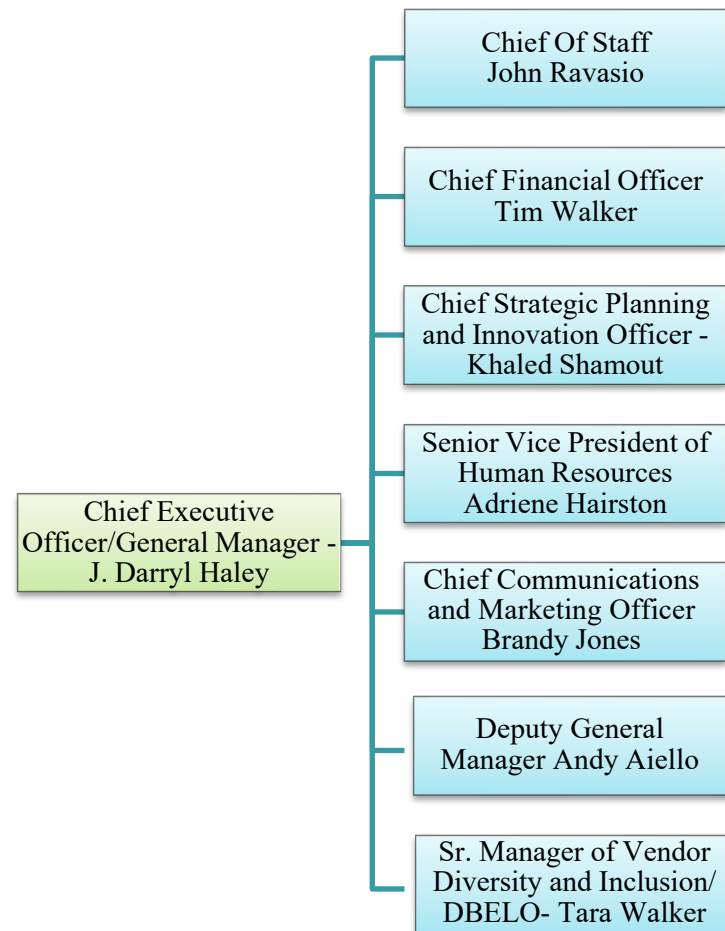
# Attachment B

## VENDOR INFORMATION

Please provide the following information about your company:

<b>Vendor Name and Address</b>		<b>Payment Remittance Address</b>	
<b>Name:</b>		<b>Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>P.O. Box or Suite No.</b>		<b>P.O. Box or Suite No.</b>	
<b>City</b>		<b>City</b>	
<b>State</b>	<b>Zip</b>	<b>State</b>	<b>Zip</b>
<b>Contact Person:</b>			
<b>Telephone No.</b>	<b>Fax No.</b>	<b>E-Mail Address:</b>	
<b>Federal Employer I.D. Number:</b>		<b>Social Security Number:</b> (If Federal I.D. is not applicable)	
<b>Payment Terms:</b>		<b>Age of Firm:</b>	
<b>List North American Industry Classification System (NAICS Codes):</b>			
<b>Disadvantaged Business Enterprise (DBE):</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach the certificate from the certifying agency.			
<b>Minority Business Category:</b> <input type="checkbox"/> Female <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian American <input type="checkbox"/> Indian/Alaskan Native <input type="checkbox"/> Other <input type="checkbox"/> Not Applicable			
<b>Minority Business Enterprise (ex. MBE, SBE, WBE, etc.):</b> <input type="checkbox"/> MBE <input type="checkbox"/> SBE <input type="checkbox"/> WBE <input type="checkbox"/> EDGE <input type="checkbox"/> DVBE <input type="checkbox"/> VET <input type="checkbox"/> DSBE <input type="checkbox"/> Other:_____			
If checked, attach the certificate from the certifying agency.			
<b>Annual Gross Receipts:</b> <input type="checkbox"/> less than \$500,000 <input type="checkbox"/> \$500,000 to \$1 million <input type="checkbox"/> \$1 million to \$5 million <input type="checkbox"/> greater than \$5 million			
<b>Please provide the number of employees for your firm.</b>			
<b>Please provide the last three years of gross revenues.</b>			
Year _____		\$ _____	
Year _____		\$ _____	
Year _____		\$ _____	

# Southwest Ohio Regional Transit Authority Organizational Chart



MINORITY DEPOSITORY INSTITUTIONS (MDIs)  
March 31, 2024

NAME	CITY	STATE	EST. DATE	CERT	CLASS	REGULATOR	MINORITY STATUS Alpha	MINORITY STATUS BY OWNERSHIP TYPE Numeric	FDIC REGION	TOTAL ASSETS (\$000)
WARSAW FS&LA	CINCINNATI	OH	08/09/1989	28217	SB	OCC	B	6	CHICAGO	104,752
ADELPHI BANK	COLUMBUS	OH	01/18/2023	59292	NM	FDIC	B	1	CHICAGO	49,281
ASIAN BANK	PHILADELPHIA	PA	06/09/1999	34759	SM	FED	A	3	NEW YORK	507,658
TIOGA-FRANKLIN SAVINGS BANK	PHILADELPHIA	PA	03/31/1873	33802	SI	FDIC	B	6	NEW YORK	77,375
UNITED BANK OF PHILADELPHIA	PHILADELPHIA	PA	03/23/1992	33568	NM	FDIC	B	1	NEW YORK	55,958

TOTAL COUNT	150
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TOTAL COMBINED ASSETS	\$351,592,575
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Count	<u>Minority Status</u>
23	B - Black or African American
30	H - Hispanic American
72	A - Asian or Pacific Islander American
20	N - Native American or Alaskan Native American
5	M - Multi-racial American

Class	<u>Definitions of Class Types</u>
98	NM - State bank, not a member of the Federal Reserve
16	SM - State bank, member of the Federal Reserve
25	N - National bank
9	SB - State or Federal savings bank
1	SI - Savings Institution
1	SL - State or Federal savings and loan association

<u>Regulator</u>	<u>Definitions by Primary Federal Supervisory Agency</u>
100	FDIC - Federal Deposit Insurance Corporation
34	OCC - Office of the Comptroller of the Currency
16	FED - Federal Reserve

Count	<u>Minority Status by Ownership Type</u>
18	1 - Black or African American owned
15	2 - Hispanic American owned
60	3 - Asian or Pacific Islander American owned
20	4 - Native American or Alaskan Native American owned
0	5 - Multi-racial American owned
5	6 - Majority of the Board African American, serving a minority community
15	7 - Majority of the Board Hispanic American, serving a minority community
12	8 - Majority of the Board Asian or Pacific Islander, serving a minority community
0	9 - Majority of the Board Native American or Alaskan Native American, serving a minority community
5	10 - Majority of the Board Multi-racial American, serving a minority community

## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN

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 sets overall Disadvantaged Business Enterprise (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 the overall goals to be realistically obtainable.

Participants in this procurement agree to ensure that small and disadvantaged businesses have an opportunity to participate in the performance of contracts and subcontracts 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 SORTA's Disadvantaged Business Enterprise program to ensure that small and disadvantaged businesses 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 this contract.

### III. BID REQUIREMENTS, TERMS AND CONDITIONS

In addition to any other requirements contained in this Invitation for Bids, the bid must include a representation that:

1. The bidder has met the goal established by SORTA for this procurement, or
2. The bidder 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 the attachment labeled "DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION". 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.

Each Bidder 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. DBE Participation Plans shall include the DBE Participation Schedule, which includes the following:

- 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 and Letter of Intent from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.

If the DBE goal is not met, the Bidder/Proposer must document in the attached form entitled "Good Faith Effort Documentation", the good faith efforts it made to include DBE participation in the contract prior to submitting the bid. 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; and
- 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.

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. Applications for certification must be made Ohio UCP Certification Application and submitted in advance of bid date. The DBE must have submitted its application for certification prior to bid submittal and be certified prior to contract award; by Federal regulation.

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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. 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.

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 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 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:

- a) Did the Bidder/Proposer attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
- b) Did the Bidder/Proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
- c) 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?
- d) Did the Bidder/Proposer follow up with the DBE firms interested in participating.
- e) Did the Bidder/Proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
- f) Did the Bidder/Proposer provide adequate information about plans, specifications, and/or contracting requirements?
- g) Did the Bidder/Proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
- h) Did the Bidder/Proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
- i) 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?

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. SORTA shall not award a contract to a Bidder/Proposer who 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.

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):

- a) SORTA may withhold all further payments under the contract.
- b) The Contractor may be ordered to stop work.
- c) The contract may be terminated for breach.
- d) Suspension or debarment proceedings may be commenced in accordance with 49 CFR, Part 29.
- e) The Director of Procurement may find the defaulting contractor non-responsible in respect to other solicitations for a stated period.
- f) The contract payments may be reduced by an amount equal to that designated in the DBE plan for DBE participation.
- g) Any performance bond(s) for the contract may be enforced.

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h) 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.

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.

Bidders/Proposers for this solicitation agree to be bound by all the requirements, terms and conditions of this notice. Nothing in this notice shall be interpreted to nullify or modify any other provision of the solicitation or resultant contract. Agreements between a Bidder/Proposer and a DBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.

## **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.



**SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE GOAL METHODOLOGY  
FOR FISCAL YEARS 2024, 2025 and 2026  
RECIPIENT ID NO: 2020**

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

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/Federal Transit Administration, 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.

### **Proposed Overall Goal**

In accordance with Section 26.45(f), SORTA submits its proposed overall goal to FTA by August 1 of the year that is due (every three years). SORTA has established a proposed overall DBE goal of **8.5%** for Federal Fiscal Years 2024, 2025 and 2026. This includes a percentage of race-conscious and race-neutral measures. The proposed goal is based on SORTA’s review of the availability of DBE firms that are ready and willing and able to participate on DOT-assisted contracts pursuant to 49 CFR Part 26.45. This goal is an effort to establish a level playing field to participate in the performance of contracts financed in whole or in part with federal funds.

### **Determination of Market Area**

The implementation of the Ohio Unified Certification Program and the current condition of our market area greatly affects the goal methodology calculation formula. Our market area consists of the entire State of Ohio, with primary activity in Hamilton, Butler, Warren, and Clermont counties. Though primary activity resides in the above counties, SORTA encourages and solicits participation from certified DBE vendors across the state of Ohio, thus increasing the market area outside of SORTA’s operating area.



A review of the Ohio Unified DBE Directory yielded limited DBE certifications with the Ohio Department of Transportation in the surrounding counties in Northern Kentucky and Indiana. Utilizing the Kentucky Transportation Cabinet and Indiana Department of Transportation Certified DBE Directories, we can identify certified DBEs in our surrounding area with the potential to become certified with the Ohio Department of Transportation. This awareness poses opportunities for outreach and opportunities to broaden the local market area. We frequently communicate with the Ohio Department of Transportation and Kentucky Transportation Cabinet to identify and refer small and disadvantaged businesses to these resources to get certified. Collaboration broadens the DBE market and increases relative availability.

### **Method**

In consideration of SORTA's market area and availability of DBEs vs. non-DBEs, the overall goal was derived by following methodologies described in 49 CFR Part 26.45, which requires the recipients of FTA funds to utilize a two-step process in the development of its DBE goal using the best available current data on both the presence of DBEs and the presence of all businesses in our Market area. The following is a summary of the method SORTA used to calculate the goal.

### ***Step 1: Base Figure***

SORTA projects that it will receive approximately \$144,883,323 in FTA financial assistance for anticipated projects listed below (See Attachment A). The projection is based on grants and financial assistance that SORTA has received in the previous triennial period, anticipated projects and what is expected to be received in FFY 2024, 2025 and 2026. This projection does not include buses. Buses will be reported to the TVM as required in part 26. Below is the projection of Federally assisted projects. It should be noted that SORTA has received an unprecedented number of grants that total to more than \$100,000,000. SORTA has also received American Rescue Plan grant funds in response to the pandemic. Additional grant funding during this triennial period can be tied to SORTA's ability to match with local funds due to a local tax levy that passed in 2021.

<b>FFY 2024-2026 Projection of Federally Assisted Projects</b>		
<b>Project</b>	<b>Anticipated Federal Contribution</b>	<b>Contract Award Year</b>
Transit Centers: Walnut Hills-Construction	\$ 1,783,323	2024
Transit Centers: Uptown- Construction	\$ 5,200,000	2024
Transit Centers: North College Hill- Construction	\$ 3,500,000	2025
Scheduling Software	\$ 1,600,000	2024
Queensgate Roof Replacement	\$ 6,400,000	2025
ERP	\$ 4,000,000	2024
RIM: BRT Construction on 8 mile corridor	\$ 57,600,000	2025
RIM: BRT Construction 9 mile corridor	\$ 64,800,000	2025
<b>Total</b>	<b>\$ 144,883,323</b>	

Pursuant to 49 CFR 26.45(c) (1), to arrive at the Base Figure, SORTA elected to evaluate groups of NAICS codes to determine the relative availability of DBEs in various fields, based on data derived from past and prospective projects.

<b>All Firms Ready, Willing and Able (DBEs and Non-DBEs)</b>			
<b>North American Industry Classification System (NAICS) Codes</b>	<b>Descriptor</b>	<b>All Established Firms (Per Census Data)</b>	<b>DBE Firms from Ohio Department of Transportation UCP Directory</b>
238910	Site Preparation Contractors/Equipment Rental/Construction/Traffic Control	1,343	105
238990	All Other Specialty Trade Contractors (Including Pavement)	983	90
237310	Highway, Street and Bridge Construction	318	130
237990	Other Heavy and Civil Engineering Construction (Includes Recreational vehicle park construction, Streetcar line construction etc)	112	78
238120	Structural Steel and Precast Concrete Contractors	113	47
238190	Other Foundation, Structure, and Building Exterior Contractors	107	24
238390	Other Building Finishing Contractors	240	44
511210	Software Publishers	302	1
<b>Total</b>		<b>3,518</b>	<b>519</b>

Sources: 1) ODOT UCP Directory, 2) US Census Data, County Business Patterns (Ohio)

As stated previously, we determined that our market area consists of the entire state of Ohio, even though contracts have mostly been awarded and performed by firms located in Hamilton, Butler, Clermont and Warren counties. As such, we included DBEs located across the state of Ohio (See Attachment B). Using the Ohio Department of Transportation's UCP directory, we determined that the total number of ready, willing, and able DBEs for all the disciplines identified for the anticipated projects was 519. We divided the total number of certified DBE Firms in the respective NAICS codes from the determined market area deemed ready, willing, and able, by the total number of firms obtained from the U.S. Census County Business Patterns that provide services under the same NAICS. As a result, the Base figure for SORTA is **15%**, respectively.

#### ***Disparity Studies and other considerations***

SORTA reviewed the findings of the City of Cincinnati's 2015 Disparity Study (See attachment C), Hamilton County's 2022 Disparity Study (See Attachment D), and the Ohio Department of Transportation's 2022 Availability Study (See Attachment E) as a part of determining the need for a step-two adjustment.

A review of these studies was useful in gaining greater understanding of the overarching disparity in the market area and the need for the establishment of both race-conscious and race-neutral goals. All three studies identified disparities and the need for race and gender conscious remedies to maximize small business participation. The studies recognized that disadvantaged businesses were underutilized in contracting and stressed the need to set goals. They also recognize that DBE participation is mostly gained from subcontracting opportunities rather than prime contracts due to availability. The City of Cincinnati's Disparity Study, ODOT's Availability Study and Hamilton County's disparity study were useful tools in assisting SORTA in deciding whether a step-two adjustment was needed, based on the findings.

### ***Step 2. Adjustment of Base Figure***

To adjust the Base Figure in Step One, SORTA considered both the statistical and anecdotal evidence presented in disparity studies conducted in the general market area, along with consideration of the current capacity of DBEs to perform work in its USDOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years. To adjust the base figure, SORTA will be utilizing the median participation percentage of previous participation for the last five (5) federal fiscal years.

### ***Arriving at the Median Past Participation: SORTA's Past participation***

SORTA arrived at the median by arranging the percentages of past five federal fiscal years' participation from low to high as follows: 0%, 0%, 2%, 5% and 15%. Due to the unprecedented circumstances surrounding COVID-19, SORTA opted to utilize data from the previous 5 fiscal years as the pre-COVID-19 data would be more reflective of future participation for similar projects. SORTA projects were delayed due to COVID-19 restrictions, which, in turn had an impact on our DBE participation in contracting opportunities. Therefore, we used the median number of the previous participation sequence of 2% as part of our adjusted base figure calculation.

<b>Median Past Participation</b>			
<b>Federal Fiscal Year</b>	<b>Total Dollars to DBE</b>	<b>Total Federally Assisted Contract</b>	<b>FTA DBE Participation Percentage</b>
FY 2018	\$189,843.00	\$1,239,595.00	15%
FY 2019	\$ -	\$923,464.00	0%
FY 2020	\$111,494.00	\$2,245,979.00	5%
FY 2021	\$23,960.00	\$1,454,882.00	2%
FY 2022	\$ -	\$791,068.00	0%

*Sources: Uniform Reporting Data from Trams – FFY 2018-2022*

### ***Adjusting Step One Base Figure***

SORTA added Step One Base Figure to the median and divided sum by 2, as illustrated in the calculation below and resulting in the overall goal of 8.5%:

$$\frac{15\% + 2\%}{2} = 8.5\%$$

### **Race-Neutral Projection– 49 CFR Part 26.51 (c)**

Per 49 CFR § 26.51(a), we are required to meet the maximum feasible portion of our triennial goal by using race-neutral means of facilitating 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.

SORTA will continue to strive to meet the maximum feasible portion of its overall DBE goal for FTA-assisted projects through the use of race-neutral measures. The City of Cincinnati's Disparity Study recommended that both race-conscious and race-neutral remedies are needed to address the identified contracting disparities in the City of Cincinnati. Based on SORTA's past race-neutral DBE participation, SORTA proposes a goal of 1% race neutral participation to be obtained using race-neutral measures.

Past Race Neutral Participation			
Federal Fiscal Year	Total DBE Race Neutral Dollars	Total Federally Assisted Contract	FTA DBE Participation Percentage
FY 2018	\$ -	\$ 1,239,595.00	0%
FY 2019	\$ -	\$ 923,464.00	0%
FY 2020	\$ -	\$ 2,245,979.00	0%
FY 2021	\$ -	\$ 1,454,882.00	0%
FY 2022	\$ -	\$ 791,068.00	0%

*Sources: Uniform Reporting Data from Trams – FFY 2018-2022*

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

SORTA will meet its overall three-year goal of **8.5%** for contracting opportunities in the following manner:

- 1% - percent by race-neutral means
- 7.5% - percent by race-conscious means

### **Race Neutral Measures to achieve participation**

SORTA implements a Small Business Enterprise program as part of the larger DBE Program to assist in participation. SORTA will use its small business program to develop its race-neutral goals through small business participation in all contracts and procurements. It includes contracting requirements that will assist small business competition, eliminate obstacles, provide technical support, 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;
- Include wording in each solicitation encouraging the use of both DBEs and non-DBE small businesses on solicitations where no DBE goal is set;
- Referral to ODOT's supportive services program to develop and improve immediate and long-term business management skills;
- Ensuring print and electronic distribution of the small business directory upon request;
- Participate and facilitate small business contracting events;
- 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.
- Refer small businesses to resource agencies to assist with financial constraints and options, technical support and certifications.
- Conduct trainings for "How to do business with Metro", proposal writing, cost estimating and resource finding.
- Partner with local, state, and national resources such as the City of Cincinnati and The Small Business Administration to hold and participate in events concerning small and disadvantaged businesses.

## **Goal Setting Consultation Process and Publication**

### ***A. Public Participation***

Consulting with stakeholders is a key component of SORTA's process for setting its overall DBE goal. SORTA held virtual and in person meetings to allow for public participation and comment (See Attachment F). SORTA made the following efforts to engage the public as part of the goal-setting process:

- Individual conversations with Stakeholders and interested parties (See Attachment G)
- Multiple virtual and in-person meetings with the public
- Advertisements in local publications of the goal methodology (See Attachment H)
- Advertisements on our webpage of notice of inspection and dates of virtual meetings (See Attachment I)
- DBE vendors in the Ohio Department of Transportation's UCP directory were notified via our Vendor Diversity and Inclusion compliance system, Prism. (See Attachment J)

Stakeholder and public meetings were held on the following dates:

***Stakeholder meeting - June 16<sup>th</sup> at 2pm***

***Virtual Public Meeting – June 26<sup>th</sup> at 10am***

***Virtual Public Meeting – June 28<sup>th</sup> at 2pm***

*In person Public Meeting – June 30<sup>th</sup> at 12pm – Cincinnati Public Library*  
*In person Public Meeting – July 10<sup>th</sup> at 5pm – Cincinnati Public Library*

**The following questions were asked during public meetings by the general public:**

Q: Do we only take DBE certifications for these projects?

A: Only DBE certified vendors will count toward participation; however, you are not barred from competing.

Q: How can we get in touch with Prime contractors to get notified or participate in a contract?

A: We can connect you in a couple of ways. First, we can provide lists of DBEs to primes when the solicitation opens, second – you can attend the pre-bid meeting and connect. I recommend signing up for our e-procurement software so that you are notified when opportunities exist.

Q: How can I get certified?

A: We will send you information about certification and connect you with the appropriate agencies.

**Notification to the Public**

**PUBLIC NOTICE  
DBE GOAL ANNOUNCEMENT**

This notice is to inform interested parties that the Southwest Ohio Regional Transit Authority (SORTA) is proposing a “Disadvantage Business Enterprise” (DBE) Participation Goal of **8.5%** for Federal Fiscal Years 2024, 2025, 2026 for projects funded, in part, by federal funds. These projects involve SORTA’s construction projects and security-related goods and services.

The percentage goal was established based on the work tasks, percentage of disadvantaged business population in Hamilton County, Ohio, historical DBE percentages, The City of Cincinnati’s Disparity Study, ODOT’s Availability Study and Hamilton County’s disparity study, past DBE County contracting experience and a DBE directory file. This notice also is to inform that the DBE Goal of 8.5% will commence in the FFY 2024 and through the FFY 2026.

If you wish to comment on the proposed goal and its rationale, both may be inspected during normal business hours of 8:00 a.m. to 4:00 p.m. Monday - Friday at the address listed below. Comments will be accepted on the goal and rationale for 30 days from the date of this notice. Comments may be sent to the address below:

Ms. Tara Walker, Vendor Diversity and Inclusion Program Manager  
Southwest Ohio Regional Transportation Authority  
1401-B Bank Street  
Cincinnati, Ohio 45214-1782

**Final Approval**

Final approval from SORTA’s board of trustees was granted on June 27<sup>th</sup>, 2023. (See Attachment K).

**TRANSIT VEHICLE MANUFACTURES CERTIFICATION OF  
COMPLIANCE WITH 49 CFR PART 26**

Each Bidder must certify that it has complied with the requirements of 49 CFR Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, Subpart C Goals, Good Faith Efforts, and Counting regarding the participation of disadvantaged business enterprises in FTA-assisted procurements of transit vehicles. Transit Vehicle Manufacturers (TVMs) must establish and submit to the FTA Office of Civil Rights for approval an overall percentage goal. In setting the overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. Only transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid. See <http://www.fta.dot.gov/civilrights/12891.html>. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive. By signing below, Bidder certifies that it has complied with the provisions of 49 CFR Part 26.49.

**TRANSIT VEHICLE MANUFACTURES CERTIFICATION**

\_\_\_\_\_, a Transit Vehicle Manufacturer (TVM), hereby certifies that it has complied with the requirement of Section 26.49 of 49 CFR Part 26, by submitting a current annual DBE goal to FTA. The goals apply to Federal Fiscal Year \_\_\_\_\_ and have either been approved or have not been disapproved by FTA.

\_\_\_\_\_ hereby certifies that the manufacturer of the transit vehicles to be supplied has complied with the above referenced requirement of Section 26.49 of 49 CFR Part 26. \_\_\_\_\_ has attached a copy of its DBE program submission, as well as a copy of its FTA DBE goal approval letter.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Name of Firm**

## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN

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 sets overall Disadvantaged Business Enterprise (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 the overall goals to be realistically obtainable.

Participants in this procurement agree to ensure that small and disadvantaged businesses have an opportunity to participate in the performance of contracts and subcontracts 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 SORTA's Disadvantaged Business Enterprise program to ensure that small and disadvantaged businesses 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 this contract.

### III. BID REQUIREMENTS, TERMS AND CONDITIONS

In addition to any other requirements contained in this Invitation for Bids, the bid must include a representation that:

1. The bidder has met the goal established by SORTA for this procurement, or
2. The bidder 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 the attachment labeled "DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION". 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.

Each Bidder 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. DBE Participation Plans shall include the DBE Participation Schedule, which includes the following:

- 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 and Letter of Intent from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.

If the DBE goal is not met, the Bidder/Proposer must document in the attached form entitled "Good Faith Effort Documentation", the good faith efforts it made to include DBE participation in the contract prior to submitting the bid. 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; and
- 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.

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. Applications for certification must be made Ohio UCP Certification Application and submitted in advance of bid date. The DBE must have submitted its application for certification prior to bid submittal and be certified prior to contract award; by Federal regulation.

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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. 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.

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 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 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:

- a) Did the Bidder/Proposer attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
- b) Did the Bidder/Proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
- c) 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?
- d) Did the Bidder/Proposer follow up with the DBE firms interested in participating.
- e) Did the Bidder/Proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
- f) Did the Bidder/Proposer provide adequate information about plans, specifications, and/or contracting requirements?
- g) Did the Bidder/Proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
- h) Did the Bidder/Proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
- i) 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?

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. SORTA shall not award a contract to a Bidder/Proposer who 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.

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):

- a) SORTA may withhold all further payments under the contract.
- b) The Contractor may be ordered to stop work.
- c) The contract may be terminated for breach.
- d) Suspension or debarment proceedings may be commenced in accordance with 49 CFR, Part 29.
- e) The Director of Procurement may find the defaulting contractor non-responsible in respect to other solicitations for a stated period.
- f) The contract payments may be reduced by an amount equal to that designated in the DBE plan for DBE participation.
- g) Any performance bond(s) for the contract may be enforced.

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h) 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.

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.

Bidders/Proposers for this solicitation agree to be bound by all the requirements, terms and conditions of this notice. Nothing in this notice shall be interpreted to nullify or modify any other provision of the solicitation or resultant contract. Agreements between a Bidder/Proposer and a DBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.

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**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 for \_\_\_\_\_,  
titled Grants Consultant, 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 **stated within the solicitation** 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 **stated within the solicitation**. 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  
Signature

\_\_\_\_\_  
Title

(TO BE SUBMITTED WITH BID)

---

**DBE AFFIDAVIT**

**THIS PAGE MUST BE COMPLETED BY EACH CERTIFIED DISADVANTAGED BUSINESS AND NOTARIZED.**

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)



**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PLAN – SHOULD INCLUDE ALL SUBCONTRACTORS**

<b>Name of Prime Contractor</b>			
<b>Title of Solicitation</b>			
	<b>Total Bid/Proposal Amount</b>	\$	

Name of Firm	DBE? (Y/N)	Contact Person & Telephone	Scope of Work	Dollar Value of Work
1.				
2.				
3.				
4.				
5.				
6.				
7.				
<b>Total DBE Dollars/% of Total Bid/Proposal Amount</b>				\$ _____ %

The undersigned will enter into formal agreements with the DBEs listed above for work in this schedule conditioned upon the award of a contract by the Southwest Ohio Regional Transit Authority (SORTA).

Signature of Prime Bidder/Proposer Representative	Title	Phone Number	Date
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**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR**

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  
(Check one box only) a(n) ☐ Individual, ☐ Company, ☐ Corporation, organized and existing under the law of the  
State of \_\_\_\_\_, or a ☐ Proprietorship, ☐ 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 Date</u> <u>Completion</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

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) \_\_\_\_\_

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**DISADVANTAGED BUSINESS SUBCONTRACTOR GOOD FAITH  
EFFORT DOCUMENTATION EVALUATION FORM**

**Instructions to bidders:** This form **must be completed** and submitted with the subject proposal or bid. Any unsuccessful efforts made to secure a subcontractor should be noted on the Small and Disadvantaged Business Unavailability Certification (separate attachment) and backup should be provided to support the good faith efforts made. The Disadvantaged Business Enterprise Unavailability Certification form is not required if the bidder/proposer was successful in obtaining participation as either a prime contractor or subcontractor. Please note that efforts to secure a contract with a subcontractor cannot be made after the submittal of the bid/proposal.

Date \_\_\_\_\_

Name of Prime  
Bidder/Proposer \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax and  
E-mail \_\_\_\_\_

DBE Goal \_\_\_\_\_ %

Bidder/Proposer Commitment: \_\_\_\_\_ \$ \_\_\_\_\_

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Submitted By \_\_\_\_\_ Date Submitted \_\_\_\_\_

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Reviewed by (Diversity and Inclusion Staff) \_\_\_\_\_ Date Reviewed \_\_\_\_\_

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**DISADVANTAGED BUSINESS SUBCONTRACTOR  
UNAVAILABILITY CERTIFICATION**

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Instructions to bidders: Completion and submission of this form is required when efforts were made to secure a subcontractor, but were unsuccessful. A separate form must be completed for each firm contacted. Backup documentation should be attached to demonstrate good faith efforts to obtain a subcontractor.

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

certify that on \_\_\_\_\_, 20\_\_\_\_, I contacted the following 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 above-identified work on  
Firm Name  
\_\_\_\_\_, but declined the offer.  
Date

To the best of my knowledge and belief, said subcontractor 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):

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**2. ☐ PLEASE CHECK IF ADDITIONAL DOCUMENTATION HAS BEEN ADDED AND LIST EACH ATTACHMENT BELOW:**

---

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

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

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

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

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The following applies to good faith effort determinations:

1. Good faith efforts are those that could reasonably be expected to result in small and disadvantaged business participation attainment by a bidder or proposer who aggressively and actively seeks to obtain certified small and disadvantaged business participation.
2. 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 sincerely motivated.
3. Certified small and disadvantaged businesses are businesses that are certified Minority Business Enterprises (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (SMALL AND DISADVANTAGED BUSINESS) or Small Business Enterprise (SBE).

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**SORTA's criteria for determining whether or not adequate effort was made follows the Bid/Proposal solicitation document, which may include, but is not limited to the following:**

- 1) Did the bidder/proposer attend any scheduled pre-solicitation or pre-bid meetings to inform disadvantaged businesses 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 disadvantaged businesses that their interest in the contract was being solicited, in sufficient time to allow the disadvantaged businesses to participate effectively?
- 4) Did the bidder/proposer follow up with disadvantaged firms interested in participating?
- 5) Did the bidder/proposer select portions of work to be done by disadvantaged businesses (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 disadvantaged businesses not rejecting disadvantaged businesses 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 firms or the names of organizations to locate such firms?

# DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

U.S. Department of  
Transportation

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in Circular section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires SORTA's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The form must be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. This form must be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. .

DBE Name:	Total Subcontract/Purchase Order Amount:
Authorized DBE Representative (Name and Title):	NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? **YES NO**  
 (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)
- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? **YES NO (If "YES," Go to Question 2. If "NO" Continue.)**
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?  
**YES NO\*** (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (**Go to Question 3.** to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? **YES NO<sup>1</sup>**  
 (If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)  
<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (**Go to Question 3.**)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? **YES<sup>2</sup> NO<sup>3</sup>**
- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? **YES<sup>2</sup> NO<sup>3</sup>**

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

**Printed Name and Signature of DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

**Printed Name and Signature of Bidder's Authorized Representative:**

**VENDOR DIVERSITY AND INCLUSION PROGRAM**

**DISADVANTAGED BUSINESS ENTERPRISE**

**COMMERCIALLY USEFUL FUNCTION**

**ONSITE CONTRACT MONITORING AND COMPLIANCE  
REVIEW**



**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:

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

<b>EVALUATED ITEMS</b>	<b>YES</b>	<b>NO</b>	<b>COMMENTS</b>
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 been 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 & DBE aware that problems or issues related to DBE performance must also be reported to DBELO?			
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?			
Does DBE know where the EEO Bulletin Board is located?			
Does signed subcontract agreement have non-discrimination clause, prompt payment clause, termination clause, start and end date?			
Was all equipment used by the DBE owned by the DBE or leased/rented from a company other than the prime?			

**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



# Unified Certification Program



OHIO DEPARTMENT OF  
TRANSPORTATION

Disadvantaged Business Enterprise  
Airport Concession Disadvantaged Business Enterprise

**WWW.OHIOUCP.ORG**

1980 WEST BROAD STREET, MS 3270 • COLUMBUS, OHIO 43223 • (614) 466-2878 • DOT.SDBE@DOT.OHIO.GOV

February 11, 2020

Dear Transit System/Public Transportation Service Manager,

The Ohio Unified Certification Program (Ohio UCP) makes all Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) certification decisions on behalf of all USDOT recipients in Ohio.<sup>1</sup> Federal regulations require recipients of U.S. Department of Transportation (USDOT) funding to participate in a UCP.<sup>2</sup> However, federal guidance exempts recipients who are not required to have DBE programs from participating in a UCP.<sup>3</sup> FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year must have a DBE program.<sup>4</sup> In Ohio, such FTA recipients must commit in writing to participate in the Ohio UCP.<sup>5</sup>

On September 30, 2019 the Federal Highway Administration granted the Ohio UCP permission to proceed under the most recently submitted revision of the UCP Memorandum of Understanding (MOU). The latest UCP MOU may be viewed at [www.dot.state.oh.us/ucpmou](http://www.dot.state.oh.us/ucpmou).

You are receiving this letter because you manage a transit system/public transportation service on behalf of an FTA recipient. The Ohio UCP is extending you this opportunity to commit the FTA recipient to participating in the Ohio UCP. Failure to participate in the Ohio UCP may have an impact on the FTA recipient's ability to receive further FTA funds.

There are two ways to participate in the Ohio UCP: as a Representative or as a Participant. If the FTA recipient's DBE Program includes specifications for DBE Certification and Revocation, and it performs such certification functions, it is a Representative of the Ohio UCP. Otherwise, it is a Participant in the Ohio UCP (unless it declares itself exempt). Exemption from the Ohio UCP is an option for those FTA recipients that award prime contracts (excluding transit vehicle purchases) the cumulative total value of which are \$250,000 in FTA funds or less in a Federal fiscal year. However, before exercising this option for the FTA recipient, you should verify with FTA Region 5 that doing so will not affect the FTA recipient's ability to receive FTA funds.

<sup>1</sup> 49 CFR 26.81(b), 49 CFR 23.31(f)

<sup>2</sup> 49 CFR 26.81(a)

<sup>3</sup> <https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/55851/official-questions-and-answers-disadvantaged-business-enterprise-program-regulation-49-cfr-26-4-25.pdf> p. 19

<sup>4</sup> 49 CFR 26.21(a)(2)

<sup>5</sup> Ibid. 3, 19

To declare the FTA recipient's commitment to participate in the Ohio Unified Certification Program, as a Representative or as a Participant, click [this link](#). The signed commitment form will be added to the UCP MOU as an addendum, and the FTA recipient's name and basic information will be listed within the Ohio UCP's web page, [www.ohioucp.org](http://www.ohioucp.org). Or, to declare the FTA recipient's exemption from participation, click [this link](#). These forms are exclusively for FTA recipients in Ohio. **Please complete the applicable form at your earliest convenience.**

If you have any questions please contact David Walker, Accountability Manager, Ohio Department of Transportation, at [david.walker@dot.ohio.gov](mailto:david.walker@dot.ohio.gov) or (614) 644-0301.

Respectfully,

A handwritten signature in blue ink that reads "Deborah M. Green". The signature is fluid and cursive, with the first name "Deborah" being the most prominent part.

Deborah M. Green  
Administrator  
Office of Business & Economic Opportunity  
Ohio Department of Transportation  
on behalf of the Ohio Unified Certification Program



**FTA Recipient's Declaration of Commitment to Participate in the  
Ohio Unified Certification Program  
(Addendum to the Ohio Unified Certification Program  
Memorandum of Understanding)**

In the blanks below, provide information about the FTA Recipient:

Name of FTA Recipient:	Southwest Ohio Regional Transit Authority
Physical Address (no PO boxes) including city/zip code:	602 Main St, Cincinnati, OH 45202
Mailing Address (if different) including city/zip code:	
Main Phone:	513-632-7614
Website:	www.go-metro.com
Contact Person(s) (including title(s), phone number(s), and email address(es):	Tara Walker DBE Administrator 513-632-7614 twalker@go-metro.com

In the blanks below, provide information about the FTA Recipient's transit system/public transportation service:

Name of System/Service:	Southwest Ohio Regional Transit Authority (SORTA/METRO)
System/Service's Website:	www.go-metro.com
Contact Person(s) (including title(s), phone number(s), and email address(es):	Tara Walker DBE Administrator 513-632-7614 twalker@go-metro.com
Where are business opportunities posted?	On SORTA Website, Public Purchase and Cincinnati Court Index

By my signature, I declare that FTA Recipient hereby:

- ☒ Commits to participate in the Ohio Unified Certification Program as a **Participant** (meaning FTA Recipient does not and will not perform DBE/ACDBE certification functions) and accepts the Terms and Conditions of the Ohio Unified Certification Program Memorandum of Understanding

or

- ☐ Commits to participate in the Ohio Unified Certification Program as a **Representative** (meaning FTA Recipient performs DBE/ACDBE certification functions and has a DBE Program that includes specifications for DBE/ACDBE Certification and Revocation), accepts the Terms and Conditions of the Ohio Unified Certification Program Memorandum of Understanding, and will abide by the rights and responsibilities of Unified Certification Program Representatives prescribed therein

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By my signature, I declare that FTA Recipient:

- ☒ Does not maintain, distribute, or otherwise offer a DBE/ACDBE directory other than that made available at [www.ohioucp.org](http://www.ohioucp.org) unless such alternative DBE/ACDBE directory is clearly marked with a disclaimer stating such directory is unofficial and may be inaccurate. The disclaimer must include a hyperlink to the official DBE/ACDBE directory at [www.ohioucp.org](http://www.ohioucp.org)

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By my signature, I declare that I am duly authorized to make the above statements and declaration and execute this Memorandum of Understanding on behalf of FTA Recipient thereby binding it to the Terms and Conditions contained therein.

Authorized Representative:

Signature:	
Title:	DBE Administrator
Email:	twalker@go-metro.com

If Authorized Representative is not an officer of FTA Recipient, provide contact information for the officer who granted the Authorized Representative's signature authority:

Name:	
Title:	
Email:	