

I. OBJECTIVES/POLICY

A. Agreement

The Northeast Ohio Areawide Coordinating Agency (NOACA) provides planning for transportation and environmental issues relative to a five-county area consisting of Cuyahoga, Geauga, Lake, Lorain and Medina. NOACA has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. NOACA receives Federal financial assistance from the Department of Transportation and the Federal Transit Administration (FTA), and as a condition of receiving this assistance, NOACA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of NOACA to ensure that DBE's, as defined in Part 26, have an equal opportunity to receive and participate in DOT and FTA assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of DOT and FTA assisted contracts;
2. Create a level playing field on which DBE's can compete fairly for DOT and FTA-assisted contracts;
3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's.

A copy of NOACA's policy will be maintained for public view in Andre Tramble's office and circulated to all staff. NOACA will notify all participating vendors via newspaper advertisements as to its procurement policy and procurement representative. NOACA also has a website address (<http://www.noaca.org>) that will allow participants to obtain an electronic copy of this policy to further our efforts of compliance with nondiscrimination.

B. Nondiscrimination

NOACA will never exclude any person from participating in, deny any persons 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, NOACA 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.

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

NOACA will provide to DOT and FTA updates that represent significant changes in the program.

II. DBE PROGRAM IMPLEMENTATION

A. Liaison Officer

NOACA has designated Andre Tramble as the DBE Liaison Officer (DBELO). In that capacity, Andre is responsible for implementing all aspects of the program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by NOACA in its financial assistance agreements with the Department of Transportation and Federal Transit Administration. Andre shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT or FTA assisted contract in administration of its DBE requirements. Andre has direct, independent access to the Executive Director concerning DBE program matters.

B. DBELO Responsibilities

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

1. Gathers and reports statistical data and other information as required by DOT and FTA.
2. Reviews contracts and purchase requisitions for compliance with this program.
3. Analyzes NOACA's progress toward goal attainment and identifies ways to improve progress.
4. Advises the Executive Director on DBE matters and achievement.
5. Maintains an updated directory on certified DBE's.

NOACA will disseminate this policy statement to the NOACA Governing Board. NOACA will make use of public newspaper advertisements as a medium for public information, i.e., RFP's and public announcements.

III. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

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

NOACA shall not be discriminated 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 NOACA 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.).

IV. DBE FINANCIAL INSTITUTIONS

It is the policy of NOACA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT and FTA-assisted contracts to make use of these institutions.

VI. DIRECTORY

NOACA maintains a directory identifying every firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. NOACA currently obtains its directory from the Greater Cleveland Regional Transit Authority. The directory is updated on a quarterly basis and NOACA will make the directory available by request at 1299 Superior Avenue, Cleveland, Ohio 44114 or by calling (216) 241-2414. The directory can be found in Attachment I to this program document.

VII. OVERALL GOALS

NOACA's overall goals for FY 2001 are as follows:

12.1% of Federal financial assistance we will expend in DOT-assisted contracts.

6.9% of Federal financial assistance we will expend in FTA-assisted contracts.

A. Method

The following is a summary of the method used to calculate this goal:

1. A base figure was derived and intended to be a measurement of the current percentage of ready, willing and able businesses that are DBE's.
2. The resulting number of DBE's available per the directory will represent the numerator in the equation.
3. The denominator is derived from the Census Bureau's County Business Pattern (CBP) database.
4. The result of this equation would then be weighted to provide the appropriate matching of dollars expended against specific SIC categories.
5. This will allow NOACA to weight the relative availability of DBE's in various categories, giving more weight to the categories in which we expend more federal dollars.
6. Finally, the goal will be adjusted to truly and accurately reflect the participation expected. This may be achieved through historical analysis or through projected utilization.

NOACA will submit its overall goal to DOT and FTA by August 1 of each year, except for FY 2000, the goal was submitted by September 1, 1999.

Before establishing the overall goal each year, NOACA verifies that public information on business enterprise participation is being held in a public forum by its certifying authorities. Further NOACA agrees if business enterprise participation forums are not held annually, we will host a public forum outlining procurement and equal opportunities.

Following the public meeting we will publish a notice via newspaper advertisement informing the public of the proposed goal. We will continue to welcome comments on the goals for 45 days from the date of the notice.

NOACA will begin using its overall goals on October 1 of each year, unless we have received other instructions from DOT or FTA.

B. Race Neutral Measures

NOACA will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation. NOACA currently contracts with vendors by

advertising in the area newspapers as well as the use of vendor catalogs and the DBE directory. NOACA awards contracts using a method that determines lowest and best.

C. Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

We will ensure that all information submitted by a bidder is complete and accurate before we commit to the performance of the contract by the bidder/offeror.

We will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

D. Certification

NOACA does not have sufficient personnel to perform the certification process. Instead we rely on the City of Cleveland, Greater Cleveland Regional Transit Authority, State of Ohio and Cuyahoga County Commissioners Offices to provide certification.

VII. CONTRACT PROVISIONS

A. Contract Assurance

We will ensure that the following clause is placed in every DOT and FTA-assisted contract and subcontract:

The contractor 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 and FTA-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.

B. Prompt Payments

We will include the following clause in each DOT and FTA assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract

for satisfactory performance of its contract no later than 60 days from the receipt of each payment the prime contractor receives from NOACA.

The prime contractor agrees further to return retainage payments to each subcontractor within 60 days after the subcontractor's work is satisfactorily completed.

Any delay or postponements of payment from the 60-day period may occur only for good cause following written approval of NOACA.

VIII. INFORMATION COLLECTION AND REPORTING

A. Collection

NOACA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT and FTA-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address and DBE/non-DBE status of firms.

NOACA will collect this information by requiring bidders to report name, address and DBE or non-DBE status when submitting proposals.

B. Reporting to DOT and FTA

NOACA will report DBE participation to DOT and FTA on quarterly basis, using DOT Form 4630.

IX. CONFIDENTIALITY

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential proprietary business information, consistent with federal, state and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the net worth requirements to a third-party (other than DOT/FTA) without written consent of the subcommittee.