

PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

INTRODUCTION

Portage Area Regional Transportation Authority (*PARTA*) operates Demand Response, Fixed-Route, and ADA Complementary Paratransit service in Portage County, Ohio. Under the direction of a 15-member board appointed by Portage County officials, *PARTA*'s 180 employees operate 67 revenue vehicles to provide public service Monday through Saturday. *PARTA*'s Demand Response (DART) service is provided to the residents of Portage County. ADA Complementary Paratransit Service is a service provided to individuals with functional disabilities who are prevented from using Fixed-Route service and live less than 3/4 of a mile from a Fixed Route.

OBJECTIVES

PARTA has issued a policy statement that expresses its commitment to use DBEs in all aspects of contracting. Various levels of responsibility are outlined, and objectives of the program are described. This policy statement is circulated throughout the organization and to minority, non-minority, and women-owned community and business organizations. It is our policy:

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

RESPONSIBILITY FOR DBE PROGRAM IMPLEMENTATION

PARTA's General Manager is ultimately responsible for the implementation, structure, and compliance of the DBE program.

The General Manager has designated the *PARTA* Director of Marketing / EEO as *PARTA*'s DBE Liaison Officer. The DBE Liaison Officer reports to the General Manager, and is responsible for developing, managing, and facilitating the implementation of the DBE program on a day-to-day basis.

DBE Liaison Officer for *PARTA*

PARTA
2000 Summit Rd.
KENT, OH 44240
(330) 678-7745
FAX (330) 676-6310
Attn: Frank Hairston

Duties assigned to the DBE Liaison Officer include, but are not limited to the following:

1. Gather and report information required by FTA.
2. Review third party contracts and purchase requisitions to ensure compliance.
3. Provide assistance to departments as they set overall annual goals.
4. Ensure timely availability of bid notices and requests for proposals to DBEs.
5. Review contracts and procurements to see those DBE goals are included in solicitations. Monitor results by utilizing race-neutral and contract specific goals.
6. Analyze PARTA's progress in meeting its goal and identify methods to improve the program.
7. Participate in pre-bid meetings.
8. Function as an advisor to the General Manager and Board of Trustees with regard to DBE matters and goal attainment.
9. Monitor contractor compliance with good faith effort.
10. Assist DBEs requiring information and help in preparing bids, and obtaining bonding/insurance.
11. Plan and participate in DBE training seminars
12. Certify DBEs according to the criteria set by DOT.
13. Provide outreach service to DBEs and community organizations to advise them of opportunities to contract with PARTA.
14. Maintain an updated directory of certified DBEs.

PROHIBITED DISCRIMINATORY ACTIONS

PARTA does not discriminate in provision of services or employment because of handicap, race, color, creed, national origin, sex, or age.

CONTRACT ASSURANCE

We will ensure that the following clause is placed in every DOT-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 the 49 CFR part 26 (Disadvantaged Business Enterprise) 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. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

PROMPT PAYMENT

PARTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from receipt of payment from PARTA. The prime contractor shall also return any retainage payments to the sub-contractor within 10 calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for food cause following written approval from PARTA. This clause applies to both DBE and non-DBE subcontracts.

DBE FINANCIAL INSTITUTIONS

It is the policy of PARTA 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 effort to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions when they are available.

DBE DIRECTORY

PARTA will maintain a directory to identify DBEs with capabilities relevant to general contracting requirements and to particular solicitations. The directory lists the firm's name and address, phone number, and the type of work performed by the firm. The Directory is revised annually. PARTA will also use the certifications of other DOT recipients where possible in its directory. The directory will be made available to contractors, bidders, and proposers. Upon request, the directory is available to the general public.

PARTA will create and maintain a bidders list which identifies all firms that bid on prime contracts or quote subcontracts on DOT-assisted projects. The following information will be collected: Firm name, address, age, DBE status, and annual gross receipts.

LEGAL AND CONTRACT COMPLIANCE MECHANISMS AND REMEDIES

All participants in the DBE program must comply with PARTA requirements and the regulations of the DOT. Any false, fraudulent, or dishonest conduct in connections with the program will be brought to the attention of the DOT so that DOT can take steps (i.e. 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. PARTA reserves the right to apply legal and contract remedies available under federal, state, and local laws.

ANNUAL DBE GOALS

After identifying projects that are federally assisted, the DBE Liaison Officer will determine if the prime contracts awarded will be greater than \$250,000 (excluding bus purchases), then set an annual overall DBE goal in accordance with Section 26.45(f) to be submitted to FTA by August 1 of each year, except for FY2000, when the actual submission date was November 1, 1999.

PARTA will publish in general circulation media a notice of the proposed overall goal. The goal and the rationale for the goal will be made available for inspection during normal business hours for 30 days following the notice, and comments will be accepted on the goal for 45 days from the date of the notice.

When the overall goal expires, a new overall goal shall be set and submitted to the Department for review.

The overall goal shall be submitted to FTA for review (August 1, annually) 60 days before the beginning of the federal fiscal year to which the goal applies. PARTA will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using this goal by the time of the first solicitation for a DOT-assisted contract for the project.

GOAL SETTING METHODOLOGY

PARTA considers the following factors in setting an overall goal:

The overall goal is based on a PARTA's projection of the number, types and dollar value of contracts to be awarded by PARTA, and a projection of the number of types of DBE's likely to be ready and available to compete for contracts from PARTA over the period during which the goals will be in effect.

PARTA's DBE goals are established as follows:

- Step 1 Examine the budget and procurement plan to determine the types and dollar amounts of goods and services to be contracted during the next fiscal year. Develop a base figure by determining the number of firms that are ready, willing, and able to provide the goods and services PARTA will be contracting for during the year.
- Step 2 Examine all the available evidence as well as historical data to determine if an adjustment to the base figure should be made. After any adjustments have been made, this figure will reflect PARTA's overall annual DBE goal.
- Step 3 Determine the breakout of estimated race-neutral and race-conscious participation for the overall goal.
- Step 4 Invite public participation by placing a legal ad in the local newspaper for a public hearing.

PARTA will use contract goals to meet any portion of the overall goal in which PARTA does not expect 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 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 the contract goal 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 goal as a percentage of the total amount of the DOT-assisted contract.

Good Faith Efforts

Once PARTA has set an overall goal, each solicitation for which a contract goal has been established will require bidders to submit the following information either under sealed bid procedures or with initial proposals under contract negotiations procedures; or at a time before a commitment to the performance of the contract:

- Names and addresses of DBE firms that will participate in the contract
- Description of the work that each DBE will perform
- The dollar amount of the participation for each DBE firm
- Written documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment
- If the contract goal is not met, evidence of good faith efforts

AWARD IF FAILURE TO MEET GOAL

To award a contract to a bidder/proposer that has failed to meet the DBE contract goals, PARTA will decide whether the bidder/proposer has made a good faith effort to actively and aggressively seek DBE's to meet those goals.

EVIDENCE OF GOOD FAITH EFFORTS

The kinds of efforts that will be considered demonstrative of 'good faith efforts' include, but are not limited to, the following:

- When other bidders on the procurement met the DBE goal
- When the contractor selected portions of the work to be performed by DBEs and where appropriate, broke out contract work items into feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own workforce.

- When the contractor has effectively used the services of available minority/women community organizations, contractors' groups and other organizations to provide assistance in the recruitment and placement of DBEs.
- When the contractor made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, related assistance, services, bonding, lines of credit, or insurance.
- When the contractor negotiated in good faith with DBEs. (Evidence of such negotiation may include names, addresses, and phone numbers of DBEs who were considered; description of the plans and specifications of the work to be subcontracted; and reasons why additional agreements could not be reached.
- When the contractor has solicited through all reasonable and available means to determine the interest of all certified DBEs who have the capability to perform the work to be contracted.

ADMINISTRATIVE RECONSIDERATION

If it is determined that the apparent successful bidder/proposer has failed to meet *PARTA's* requirements, the bidder/proposer has an opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the commitment or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new and amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of the payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

PARTICIPATION COUNTING TOWARDS GOALS

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials which are obtained by the DBE, or any equipment leased (except from the prime contractor or its affiliate) may also be counted. Work that is subcontracted by a DBE to a non-DBE firm does not count towards DBE goals.

NONDISCRIMINATION ASSURANCE

It is the policy of PARTA not to use quotas or set-asides in its efforts to meet DBE program goals.

Some of the techniques, which PARTA employs to facilitate DBE participation in contracting activities, include:

- Arranging times for the presentation of bids, solicitations, quantities, delivery schedules, and specifications to facilitate the participation of DBEs.
- Advertising formal procurement in the local media stating that DBEs are welcome to respond.

CERTIFICATION STANDARDS

PARTA will ensure that only certified DBEs participate in its DBE program. All firms seeking certification must demonstrate that they meet the eligibility requirements of Subpart D of 49 CFR part 26 concerning group membership or individual disadvantage, ownership and control, business size, and at least 51 percent owned by socially and economically disadvantaged individuals. A firm applying to be a DBE must be certified by a qualified certifying agency. Contributions of capital or expertise must be real and substantial. A disadvantaged owner's expertise must be specific to the type of work the firm performs, in a specialized field, indispensable to the firm's operations, of outstanding quality, and documented in the records of the firm.

PARTA will accept the certification of other DOT recipients if the applicant can provide certification documents.

Every year on the anniversary date of the certification, each DBE must provide PARTA an affidavit sworn to by the firm's owners before a person who is authorized by state to administer oaths or an unsworn declaration executed penalty of perjury of the laws of the United States of America. Said affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements, or any material changes in the information provided in the application. Any DBE who fails to provide this information provided in the application. Any DBE who fails to provide this information will be deemed to have failed to cooperate, and will suffer the remedies available to PARTA under 40 C.F.R. part 26.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

MONITORING PAYMENTS OF DBEs

PARTA will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request of any representative of PARTA or DOT. This reporting requirement extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

REPORTING REQUIREMENTS

PARTA will report DBE participation to the DOT as follows: We will report DBE participation on a semi-annual basis using the appropriate form.

CONFIDENTIALITY

PARTA 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 unless there is written consent of the submitter.

COMPLAINT RESOLUTION

Any person who believes that he or she, individually, or as a member of any specific class of persons, has been subjected to discrimination on the basis of race, color, or national origin in violation of Title VI may file a written complaint with PARTA. A complaint must be filed within 180 calendar days after the date of the alleged discrimination, unless the time for filing is extended by PARTA.

A. Submission of Complaints

(1) Filing Complaints of Discrimination

- a. Complainants may submit written complaints to the General Manager of PARTA at the following addresses:

2000 Summit Rd.
Kent, Ohio 44240

- b. In cases where the complainant is unable or incapable of providing a written statement, but wishes PARTA to investigate alleged discrimination, a verbal complaint of discrimination may be made. If necessary, PARTA will assist the person in converting verbal complaints to writing. All complaints must, however, be signed by the complainant or his/her representative.

(2) Complaint Form

- a. All complaints must be in writing and signed by the complainant or his/her representative before action can be taken. Complaints shall state, as fully as possible, the facts and circumstances surrounding the alleged discrimination.
- b. PARTA will provide the complainant or his/her representative with a written acknowledgment that PARTA has received the complaint within 10 calendar days.

(3) Determination of Investigative Merit

A complaint shall be regarded as meriting investigation unless:

- a. It clearly appears on its face to be frivolous or trivial;
- b. Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;
- c. Within the time allotted for making the determination of jurisdiction and investigative merit, the party complained against voluntarily concedes noncompliance and agrees to take appropriate remedial action;
- d. Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or
- e. Other good cause for not investigating the complaint exists, e.g. the same or a related complaint is already under investigation by PARTA.

B. Request for additional information from Complainant and/or Respondent

In the event that the complainant has not submitted sufficient information to make a determination of investigative merit, PARTA may request additional information from the complainant. This request shall be made within 15 calendar days of the receipt of the complaint by PARTA and will require that the party submit the information within 60 calendar days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for a determination of no investigative merit.

C. Notification of Disposition

PARTA shall notify within 5 calendar days by certified letter the complainant of the disposition:

- (1) In the event of a decision not to investigate the complaint, the notification shall specifically state the reason for the decision.

- (2) In the event the complaint is to be investigated, the notification shall inform the party that an investigation will take place, and request any additional information needed to assist the investigator in preparing for the investigation.

D. Complaint Investigation

(1) Priority Complaints

All incoming complaints shall be examined to determine if the discrimination alleged would be irremediable if not dealt with promptly. If such a determination is made, the complaint shall be given priority status. The processing, investigation, and determination of such complaints shall be accelerated to advance significantly the normal completion date of the process.

(2) Investigative Report

A written report will be prepared by the responsible PARTA investigator at the conclusion of the investigation. The investigative report will include the following:

- a. Summary of the complaint, including a statement of the issues raised by the complainant and PARTA's reply to each of the allegations;
- b. Citations of relevant Federal, State, and local laws, rules, regulations, and guidelines, etc;
- c. Description of the investigation, including a list of the persons contacted by the investigator and a summary of the interviews conducted; and
- d. A statement of the investigator's findings and recommendations.

E. Disposition of Complaints

(1) Informal Resolution

If the Notice of Disposition is issued and finds PARTA is in noncompliance, the respondent is required to initiate voluntary remedial actions.

(2) Request for Reconsideration

The complainant may request reconsideration of PARTA's findings within 30 calendar days of the Notice of Disposition. This request should include any additional information or analysis the complainant considers relevant. PARTA will inform the respondent of its decision to accept or reject the request within 30 calendar days after its receipt.

In cases in which a request for reconsideration is approved, the responsible investigator will reopen the investigation and proceed to process the complaint in the same manner described above.

(3) Appeal to FTA/USDOT

If complainant is not satisfied with *PARTA*'s response and/or remedial action, he/she may appeal *PARTA*'s decision to USDOT, FTA Headquarters or FTA Regional office at the following addresses:

USDOT
Departmental Director of Civil Rights
Office of the Secretary
Department of Transportation
400 Seventh Street, SW., Room 10215
Washington, DC 20590

FTA Headquarters
Director, Office of Civil Rights
Federal Transit Administration
Room 7412
400 Seventh Street, Southwest
Washington, DC 20590

FTA Regional Office
Office of Civil Rights
Federal Transit Administration
200 West Adams Street/Suite 2410
Chicago, Illinois 60606