



PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY (*PARTA*)

U.S. DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
Based on 49 CFR Part 26

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

INTRODUCTION

Portage Area Regional Transportation Authority (*PARTA*) operates Demand Response, Fixed-Route, and ADA Complementary Paratransit service in Portage County, Ohio. *PARTA*'s governing body is organized as a 15-member board of trustees. As of December 2020, *PARTA*'s 133 employees operate 55 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 a disability who are prevented from using Fixed-Route service and live or are travelling within 3/4 of a mile from a Fixed Route.

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives/Policy Statement

PARTA has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. *PARTA* has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, *PARTA* has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of *PARTA* to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. This policy statement is circulated throughout the organization and to minority, non-minority, and women-owned community and business organizations. *PARTA* has disseminated this policy statement to the *PARTA* Board of Trustees and all the components of our organization. *PARTA* has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing an ad in the local newspaper and posting it on our website.

It is also our policy:

- a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- b) To create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
- c) To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f) To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients;
- g) To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
- h) To use the flexibility available to attract appropriate opportunities for DBE participation.

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

The General Manager has designated **Denise Baba, Communications and Public Advocacy Advisor, as *PARTA*'s DBE Liaison Officer.** The DBE Liaison Officer directly 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. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by *PARTA* in its financial assistance agreements with the Department of Transportation.

Copies of the Policy Statement are conspicuously posted throughout the *PARTA* facility and on *PARTA*'s website at www.partaonline.org. A copy of this program is also available for review upon request.

Claudia B. Amrhein, GM

December 8, 2020

Claudia B. Amrhein, General Manager

Date

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.3 Applicability

PARTA is a direct recipient and eligible for Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107. 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; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Public Law 105-178; and 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; and 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](#).

Section 26.5 Definitions

PARTA will adopt the definitions contained in 49 CFR 26.5 for this program.

Section 26.7 Non-discrimination Requirements

PARTA 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, *PARTA* will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(a & b)

PARTA will report DBE participation as directed to DOT by reporting the overall DBE participation on a semi-annually basis, using the Uniform Report of DBE Awards or Commitments and Payments on the TrAMS website. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

PARTA maintains a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this list is to provide data as accurate as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally assisted contracts to assisting helping to set overall goals. The bidders list will include the name, address, DBE non-DBE status, age of the firm, annual gross receipts of firms, NAICS codes, race of the firm's majority owner, and gender of the firm's majority owner.

PARTA will collect this information in the following ways:

- *PARTA* will collect the information from any bidder at any time when they contact the Procurement Office.
- During the bidding process all prime and sub-contractors are to provide this information to *PARTA* via the required certifications.
- From the "Join Our Bidder's List" form on the *PARTA* website

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

PARTA 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. PARTA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. PARTA'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 PARTA of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq*).

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

Contract Assurance: 26.13b

PARTA 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, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

Section 26.15 Exemptions or Waivers

PARTA will adopt the procedures contained in 49 CFR 26.15 if an exemption or waiver is warranted.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

As a Tier 1 recipient, PARTA has historically received federal grants of \$670,000 or more in FTA planning, capital, and/or operating, assistance in a federal fiscal year. PARTA will continue to carry out all the requirements of the program until all funds from DOT financial assistance have been expended. PARTA will notify DOT of any updates representing significant changes in the program.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the page 2 of this program.

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.25 DBE Liaison Officer (DBELO)

PARTA has designated the following individual as our DBE Liaison Officer (DBELO):

Ms. Denise Baba, Communications and Public Advocacy Advisor/EEO/DBELO/CR
PARTA
2000 Summit Rd.
KENT, OH 44240
(330) 678-7745
FAX (330) 676-6310
e-mail: dbaba@partaonline.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that PARTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO, or designee, conducts all the administration of the program. Duties and responsibilities include 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.
11. Plan and participate in DBE training seminars.
12. Provide outreach service to DBEs and community organizations to advise them of opportunities to contract with PARTA.
13. Maintain an updated directory of certified DBEs.

Section 26.27 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 efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions when they are available.

Section 26.29 Prompt Payment Mechanisms

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 30 calendar days from receipt of payment from PARTA. The prime contractor shall also return any retainage payments to the sub-contractor within 30 calendar days after the subcontractor's work is satisfactorily completed, regardless if retainage is withheld from the prime contractor. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by PARTA. 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. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

written approval from PARTA. This clause applies to both DBE and non-DBE subcontracts. In order to enforce this requirement, A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

PARTA includes prompt payment clauses in all of its federally funded contracts. For each pay application with DBE participation, the accounting department will notify the DBE Liaison Officer (DBELO) that a payment has been made to the prime contractor. Within 30 days the DBELO (or their) designee will contact the DBE firm to ensure that payment has been made.

PARTA will notify the prime contractor if they are in violation of prompt payment and confirm that the payment is immediately made to the DBE firm. If the payment is not made, then future payments to the prime contractor will be delayed.

Section 26.31 Directory

PARTA will use ODOT's directory to identify DBEs with capabilities relevant to general contracting requirements to particular solicitations. The directory lists the firm's name and address, phone number, and the type of work performed by the firm expressed with NAICS codes. The Directory is routinely updated. 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.

Section 26.33 Overconcentration

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

Section 26.35 Business Development & Mentor-Protégé Programs

PARTA has not established, and FTA has not directed PARTA to establish a DBE Business Development Program or a Mentor- Protégé program.

Section 26.37 Monitoring and Enforcement Mechanisms

PARTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR part 26.109. PARTA also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

PARTA will monitor DBE participation on race-neutral contracts as well as contracts that have DBE goals. In addition, PARTA will verify that a DBE performed work on a contract by meeting with the contractor on site and completing a survey form. Additionally, PARTA will confirm that the work was a commercially useful function (CUF). Further, PARTA will maintain a "running tally" of its overall DBE attainment as well as each prime contractor's payments to DBEs it is using to meet its goal.

In the event a participant in our procurement activities does not comply with the DBE regulations, PARTA will proceed with its standard contract termination proceedings which are found in the Good Faith Efforts Section of this plan.

PARTA ensures that all DBE/MBE subcontractors are being paid in a timely fashion by phone interviews. Site visits are performed by the DBELO and/or the project manager for each individual project to verify the work being done is by the DBE/MBE and not the prime.

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

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

upon request of any representative of *PARTA* or DOT. This reporting requirement extends to any certified DBE subcontractor.

PARTA 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. *PARTA*'s records will show both commitments and attainments of DBE companies.

Section 26.39 Fostering Small Business Participation

PARTA has always focused on using small businesses in its procurements. Outreach is done by all administrative employees while out in the local community and at other events. *PARTA*'s staff participates in many local events, which enables a starting point with vendors in the community. These contacts are then passed on to the Procurement Department for addition to the appropriate bidder list.

PARTA currently tracks all DBE participation for all procurements using Federal Funds. This information is then passed on to our Board of Trustees, usually once a year.

PARTA developed a vendor survey form that includes the annual gross receipts for each company. This form is part of the Standard Certifications that are completed in all large procurements. The DBE Program will include an element to structure race neutral contracting requirements in an effort to facilitate competition by all small businesses to achieve the objectives of the program. For the purposes of implementing this program a Small Business is defined as a firm that:

- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the United States economy by paying taxes or using American products, services, materials and/or labor; and
- Does not exceed the numerical Size Standard for its industry as established by the U.S. Small Business Administration (SBA).

A small business may be a sole proprietorship, partnership, corporation, Limited Liability Corporation, or any other legally formed entity. Eligible firms are those small businesses that have been certified by the SBA and can provide to *PARTA* a copy of their current SBA letter of certification attesting to their eligibility. The letter will act as an official document for participation in the Program. Additionally, this information will be verified by utilizing SBA's on-line directory and the Contractor's Central Registration System. Small businesses are classified through standards promulgated by the SBA. SBA uses the North American Industry Classification System (NAICS) to identify different industries, services, commodities, and products. Size Standards indicate the largest size that a business may be to classify as a small business for federally funded contracting opportunities.

PARTA is committed to the utilization of small businesses and affording said businesses the maximum opportunity to participate and compete in *PARTA*'s procurement practices. In order to facilitate competition and maximize participation by small businesses, the following steps will be implemented to reducing obstacles to small business participation in *PARTA* contracting opportunities:

1. Avoid unnecessary and unjustified bundling of contract requirements and;
2. Utilize *PARTA*'s fiscal year budgetary planning to develop small business utilization for potential upcoming contracting opportunities;
3. Establish a team to diligently facilitate contracting opportunities, awareness and recognition of the critical role that small businesses play in advancing *PARTA*'s procurement activities;
4. Foster through the team, an environment that encourages commitment, the use of integrated systems, professional management tools, and pursues innovative solutions in support of small businesses;

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

5. On prime contracts not having DBE contract goals, *PARTA* encourages the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved;
6. *PARTA* may not use small business participation when a DBE goal is considered to be in the best interest of *PARTA* to satisfy the contract solicitation requirement.
7. Monitor payments to prime small business contractors by (a) reviewing letters of intent and subcontractor schedules of participation to assess the tasks awarded and dollar value involved; (b) maintain a reconciled running tally of payments for the duration of the work to be performed by subcontractors; (c) require prime small business contractors to submit notification of payments of their subcontractors on a monthly basis or as is appropriate considering the type of work being performed or the relevant length of the contract in question. In any event, the notification shall be made to *PARTA*'s DBE Liaison at the time of the actual payment by the prime small business to the subcontractors; (d) review the prime small business contractors' payment documents and subcontractor receipt of payment documents; (e) verify payment and receipt of payment as required and (f) credit small business concern participation toward the contract threshold only when payments are actually made to small businesses.
8. Report to USDOT-Federal Transit Administration (FTA) small business participation including payments actually made to small businesses on USDOT assisted contracts, when required.
9. *PARTA* will ensure that implementation; monitoring and enforcement mechanisms are in place to verify that the work committed to small businesses at contract award is actually performed by small businesses. Enforcement measures may include rescission of contract awards (in whole or in part), administrative fines, debarment from bidders' lists, suspensions from awards, sanctions, referral to appropriate federal authorities in instances of suspected fraud, misrepresentation, misappropriation of funds, theft of services and other activities that warrant criminal referrals or other action; and other appropriate administrative actions.
10. Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures by consisting small businesses, including DBEs, to compete for and perform as prime contracts.

SUBPART C – GOALS, GOOD FAITH EFFORTS AND COUNTING

Section 26.41 Statutory 10 Percent Goal

PARTA has developed a methodology for setting DBE goals. The 10 percent national goal is an aspirational goal, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts. *PARTA* will not arbitrarily use the National 10% attainment goal.

Section 26.43 Set-asides or Quotas

PARTA does not use quotas in any way in the administration of the DBE program. Under the new provision in Section 26.39, *PARTA* may use race-neutral contract set-asides for qualified small business. 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 procurements in the local media stating that DBEs are welcome to respond.

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.45 Overall Goals

PARTA develops its overall goal based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal reflects our determination of the level of DBE participation expected absent the effects of discrimination.

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 every three (3) years. PARTA will not arbitrarily use the National 10% attainment goal.

GOAL SETTING METHODOLOGY

PARTA's DBE goals are established using a 2-step process as follows:

Step 1 – Determine the Base Figure for the relative availability of DBE's.

- A. Examine the budget and procurement plan to determine the types and dollar amounts of goods and services to be contracted during the next three (3) years. Create a list of projects using federal funds and expected NAISC codes involved with those projects.
- B. Using the Ohio UCP DBE directory, PARTA's bidders' list, census bureau statistics, and web searching, develop a weighted base figure by dividing the number of ready, willing, and able DBEs by the number of all businesses in your market to provide the goods and services PARTA will be contracting for during this period.

Step 2 – Adjust the Base Figure (if appropriate).

- A. Examine all the available evidence, such as local market and employment trends and historical data of similar projects to determine if an adjustment to the base figure should be made. This adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought. After any adjustments have been made, this figure will reflect PARTA's overall tri-annual DBE goal.

Determining the breakout of estimated race-neutral and race-conscious participation for the overall goal is addressed in section 26.51.

PARTA will invite public participation by 1. publishing in general circulation media a notice of the proposed overall goal; 2. meet with local stakeholders, minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses; and 3. Publishing on PARTA's website at www.partaonline.org. 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 addressed before the final goal is submitted to FTA.

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

The overall goal, including the methodology and calculations, shall be submitted to FTA for review (August 1, tri-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. PARTA may adjust the overall goal

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

during the three-year period, to which it applies, in order to reflect changed circumstances submitting such an adjustment to the concerned operating administration for review and approval.

Section 26.47 Penalty for Failing to Meet Overall Goals

If the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, PARTA will do the following in order to be regarded by the Department as implementing your DBE program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

PARTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, PARTA 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. Within 30 days of entering into a contract to procure a transit vehicle, PARTA will report to FTA the name of the TVM that was the successful bidder, and the Federal share of the contractual commitment at that time.

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

PARTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

PARTA intends to achieve Race-neutral DBE participation by:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (4) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.51(d-g) Contract Goals

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. Contract goals are expressed as a percentage of the total amount of the DOT-assisted contract.

PARTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. *PARTA* will 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). The contract goal will provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

To ensure that our DBE program continues to be narrowly tailored to overcome the effects of discrimination, *PARTA* will adjust the use of contract goals as follows:

- (1) If the approved projection estimates for the entire overall goal through race-neutral means will be met, *PARTA* will implement its program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.
- (2) If, during the course of any year in which contract goals are used, it is determined that the overall goal will be exceeded, the use of contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that *PARTA* will fall short of its overall goal, then appropriate modifications will be made in the use of race-neutral and/or race-conscious measures to allow the overall goal to be met.

PARTA will maintain and report data separately on DBE achievements in those contracts with and without contract goals.

Section 26.53 Good Faith Efforts Procedures

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 (Note: 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);
- 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 must be demonstrated.

In a design-build contracting situation, in which the recipient solicits proposals to design and build a project with minimal-project details at time of letting, the recipient 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 above of this section 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, the recipient must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. The recipient and the design-builder may agree to make

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

written revisions of the OEPP throughout the life of the project, *e.g.*, replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

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. *PARTA* 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.

PARTA 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. *PARTA* 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, *PARTA* 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.

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.55 Participation Counted Toward Goals

PARTA 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.

When a DBE performs as a participant in a joint venture, *PARTA* will 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. *PARTA* will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract as stated in 49 CFR 26.55. As described in 49 CFR 26.55 (e), *PARTA* 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) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, *PARTA* 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 determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, the cost of the materials and supplies themselves are not counted toward DBE goals.

In order to count the firm's participation toward any DBE goals, except as provided for in §26.87(i), a firm must be certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract.

Participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract will be recognized once the amount being counted has actually been paid to the DBE.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

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. *PARTA* does not certify DBE applications.

Every year on the anniversary date of the certification, each DBE must provide the certifying agency 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 will be deemed to have failed to cooperate and will suffer the remedies available under 40 CFR. part 26.

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.81 - 26.88 Unified Certification Program and Certification

PARTA works together with the Ohio Unified Certification Program (UCP). The UCP will meet all of the requirements of this section and they can be found at www.ohioucp.org.

Section 26.89 Certification Appeals

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

U.S. Department of Transportation
Departmental Office of Civil Rights

1200 New Jersey Avenue SE
Washington, D.C. 20590-0001

PARTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.103 Enforcement Actions to FHWA & FTA Recipients

- (a) *Noncompliance Complaints.* Any person who believes that *PARTA* has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (b) *Compliance Reviews.* The concerned operating administration may review *PARTA*'s compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (c) *Reasonable Cause Notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that *PARTA* is in noncompliance with this part, the appropriate DOT office promptly sends, return receipt requested, a written notice advising that there is reasonable cause to find *PARTA* in noncompliance. The notice states the reasons for this finding and directs a response within 30 days concerning whether *PARTA* wishes to begin conciliation.
- (d) *Conciliation.* (1) If *PARTA* requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes. (2) If *PARTA* and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and *PARTA* is regarded as being in compliance. The conciliation agreement sets forth the measures taken or will take to ensure compliance. While a conciliation agreement is in effect, *PARTA* will remain eligible for FHWA or FTA financial assistance. (3) The concerned operating administration shall monitor implementation of the conciliation agreement and ensure that its terms are complied with. If *PARTA* fails to carry out the terms of a conciliation agreement, you are in noncompliance. (4) If *PARTA* not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

Section 26.107 Enforcement Actions to Firms Participating in DBE Program

- (a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
- (b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- (d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.
- (e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Information, Confidentiality, Cooperation

PARTA will safeguard from disclosure to third parties any information that may reasonably be regard 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.

U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26

- 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:

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

- 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) Complaint to FTA/USDOT

A complaint also may be submitted directly 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

**U. S. DEPARTMENT OF TRANSPORTATION DBE PROGRAM
49 CFR PART 26**

**ATTACHMENT 1
2019 ORGANIZATION CHART**

