

**DEPARTMENT OF TRANSPORTATION  
DBE PROGRAM – 49 CFR PART 26  
BOROUGH OF POTTSTOWN/POTTSTOWN AREA RAPID TRANSIT**

**POLICY STATEMENT**

**Section 26.1, 26.23**

**Objectives/Policy Statement**

The Borough of Pottstown/Pottstown Area Rapid Transit has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Borough of Pottstown/Pottstown Area Rapid Transit has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Borough of Pottstown/Pottstown Area Rapid Transit, referred to as BOP/PART, has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the BOP/PART to ensure that DBEs are 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
7. To implement a DBE Program Overall Goal for FY2012-2014 of 8.924%. The DBE Program Overall Goal for FY2012-2014 of 8.924% is 100% race neutral.

*Erica L. Weekley*, has been delegated as the DBE Liaison Officer. In that capacity, Erica L. Weekley is responsible for implementing 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 the BOP/PART in its financial assistance agreements with the Department of Transportation.

BOP/PART will disseminate this information to all transit staff and management and Borough Council. We will also distribute this statement to any and all DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

\_\_\_\_\_  
Stephen M. Toroney, Borough Council President

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

BOP/PART is the recipient of Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

BOP/PART will adopt the definitions contained in Section 26.5 for this program.

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

BOP/PART 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, BOP/PART 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(b)

We will report DBE participation to DOT as follows:

As FTA recipients, we will report DBE participation on a semi-annual basis using DOT Form 4630. These reports will be submitted if any payments were actually made to DBEs on DOT-assisted contracts.

#### Bidders List: 26.11(c)

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

## **Section 26.13 Federal Financial Assistance Agreement**

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

### Assurance: 26.13(a)

BOP/PART 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 the BOP/PART of its failure to carry out its approved program, the Department may impose sanction 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.

### Contract Assurance: 26.13b

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

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since BOP/PART has received a grant of \$250,000 or more in FTA financial assistance in either planning, operating, or capital, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

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

### **Section 26.25 DBE Liaison Officer (DBELO)**

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

*Erica L. Weekley, Assistant Borough Manager, DBE Liaison Officer*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the *BOP/PART* complies with all provision of 49 CFR Part 26.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of Kourtney High, Grants Administrator, and Jennifer Ridgway, Transportation Director, to assist in the administration of the program. The duties and responsibilities include the following:

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

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

It is the policy of BOP/PART 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.

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

The BOP/PART 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 days from the receipt of each payment the prime contract receives from BOP/PART. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the BOP/PART. This clause applies to both DBE and non-DBE subcontracts.

### **Section 26.31 Directory**

BOP/PART uses the PA UCP Directory as its DBE Directory. This Directory can be found at <http://www.paucp.com/>.

### **Section 26.33 Overconcentration**

BOP/PART has not identified that overconcentration exists in the types of work that DBEs perform.

BOP/PART reviewed the number of contracting opportunities and has determined that there is no overconcentration of DBE's in one particular market. BOP/PART will continue to review and analyze the market areas of PART's budget to determine if there is an overconcentration of DBE's performing work, which may result in an undue burden on non-DBE's. If BOP/PART evaluates that there is an overconcentration of DBE contracts, then appropriate measures will be taken to address this overconcentration.

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

BOP/PART has not established a business development program.

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

BOP/PART will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

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

In order to foster small business participation in DOT assisted contracts, BOP/PART will do the following:

1. BOP/PART will evaluate each contract separately and decide, based on the scope of work and availability of small businesses to perform work activities, whether to set a goal for race-neutral small business participation.
2. If a specific small business goal is developed for a project, the Request for Proposals (RFP) will require bidders to explain how they propose to achieve the specific goal. Bidders must show a good faith effort in achieving the goal, and include documentation of efforts if they are unable to achieve the goal. The RFP will clearly state the small business goal is race/gender neutral.
3. BOP/PART will send solicitations directly to small businesses where applicable.

In addition, BOP/PART will make an effort to review and remove unnecessary and unjustified bundling of contract requirements, and race-neutral small business set-asides for prime contracts below a certain value; requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation.

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

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

BOP/PART does not use quotas in any way in the administration of this DBE program.

### **Section 26.44 Overall Goals**

In accordance with Section 26.45(f) BOP/PART will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, BOP/PART will consult with the FTA to obtain the most recent requirements for establishing goals and in order to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the BOP/PART's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish 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 your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the

date of the notice.

Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We 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 our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.45 Exceptions and New Rules**

Effective March 3, 2010, FTA recipients only need to submit their DBE goal to FTA once every three years. The change to a 3-year goal submittal affords the opportunity to focus more on efforts to meet your goals. As was the case with annual goals, the three-year DBE goal should capture as completely and accurately as possible all of the federally assisted contracting opportunities your organization reasonably anticipated having over the three upcoming federal fiscal years. Should the contracting opportunities unexpectedly increase, decrease or significantly change during the three year period such that the submitted goal is rendered obsolete, recipients may - - and should - - - appropriately amend both the goal and DBE contracting practice in order to ensure the goal and program is narrowly tailored and accurately reflects the actual contracting opportunities available during the specified time period.

***BOP/PART's DBE goal covers fiscal years 2012, 2013, 2014.***

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

BOP/PART 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, BOP/PART 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(d-g) Contract Goals**

BOP/PART will use contract goals to meet any portion of the overall goal BOP/PART 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. We will express our contract goals as a percentage.

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

### Demonstration of good faith efforts (26.53(a) & (c))

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

### Information to be submitted (26.53(b))

BOP/PART treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness or responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

### Administrative reconsideration (26.53(d))

Within 30 days of being informed by BOP/PART that it is not [*responsive or 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: [*provide name, address, phone number, e-mail address.*] The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.



### Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

BOP/PART 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 or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the [Name of Recipient] to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required 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 firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

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

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

## **SUBPART D – CERTIFICATION STANDARDS**

## **Section 26.61 – 26.73 Certification Process**

BOP/PART will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. The PA UCP website also details the certification process.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

BOP/PART is the member of the PA Unified Certification Program (UCP).

### **Section 26.83 Procedures for Certification Decisions**

Re-certifications 26.83(a) & (c)

The United Certification Program that BOP/PART is a member of performs all DBE certifications through a process that is outlined on their website.

The PA UCP provides a “one stop shopping” for firms seeking certification as a Disadvantaged Business Enterprises (DBE) in accordance with 49 CFR Part 26. The PA UCP makes all certification decisions on behalf of all agencies and organizations in the Commonwealth with respect to participation in the DBE Program.

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

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

We will safeguard from disclose to third parties information that may reasonably be regarded as confidential 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 personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will make available for inspection upon request by any authorized representative of the BOP/PART or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

## **ATTACHMENTS**

Attachment 1 – Organizational Chart

Attachment 2 – Monitoring & Enforcement Mechanisms

Attachment 3 – Overall Goal Explanation

Attachment 4 – DBE Goal Setting Calculation & PART Operating Budget

Appendix A to Part 26 – Examples of Good Faith Efforts

Appendix B – Forms 1 & 2 for Demonstration of Good Faith Efforts

**ATTACHMENT 1**

**Organizational Chart**

**Pottstown Borough Council**

**Administration**

**Borough Manager**

**Assistant Borough Manager, (DBELO), Direct oversight over GM**

**Grants Administrator**

**Administrative Support**

**Transit Operator**

**General Operation Manager**

**PART Office Personnel/Dispatch**

**Revenue Vehicle Operator**

**Revenue Vehicle Maintenance Technician**

## **ATTACHMENT 2**

### **Monitoring and Enforcement Mechanisms**

The Transit Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. FTA 49 CFR part 26

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

### ATTACHMENT 3

#### Overall Goal Calculation – 8.924%

##### Methodology:

The Borough of Pottstown considered all available contracting opportunities resulting from FTA assistance in the development of our **Overall Goal Calculation of 8.924%**. Contracting opportunities in FY2011-2012, as well as projections for operating and capital planning through FY2013, and FY 2014 have been considered. As referenced in Attachment 4, DBE Goal Setting Calculation & PART Operating Budget, the Borough has evaluated the operating budget for FY2012 and has determined that nearly all line items remain the same, and are identical in description and in budgeted amount every year. Historically, the Borough has used the same operating budget and schedule of line items, and amounts may or may not be adjusted slightly for inflation, variance in organization management, or due to one time requests. Based on this examination of the budget, we reasonably anticipate that the goal will remain the same for FY2012 through FY2014.

The Borough of Pottstown contracts with PART Inc., a private transit operator to provide fixed route and non-fixed route transportation services. The Borough of Pottstown oversees and administers the system out of offices at Borough Hall, 100 East High Street, Pottstown, PA 19464. The PART offices, located at 902 Farmington Avenue, Pottstown, PA, provide the administrative functions, customer service, dispatch, maintenance, vehicle repair and servicing, and PART vehicles and equipment are stored in a common facility managed by PART. D&D Collision Services is a vehicle repair and auto body service, which shares a common facility and management with PART, but is operated as a separate company. D&D mechanics and support personnel perform all routine vehicle maintenance on PART vehicles including preventative maintenance inspections and diagnostic repairs as well as brake rebuilds, minor body and paint work, farebox repairs and servicing. Component rebuilds, overhauls and body work are also performed in house. PART handles the fueling, cleaning, and servicing of the bus fleet in house. Consumables are replenished such as oil, anti-freeze, and transmission fluid as needed. Service line employees complete cleaning of the interior of each bus. Nearly all the equipment necessary to maintain the bus fleet is available on – site, and the facility is in very good repair.

Available contracting opportunities do exist in the areas of repair parts, tires, oil, printing of transit related materials such as transfers, tickets, and brochures, office supplies, computer equipment, safety and security equipment, and fuel.

The Borough of Pottstown's geographic preference includes Montgomery, Chester, Berks, Lehigh, Philadelphia, Bucks, and Delaware Counties in Pennsylvania. The

contractors and subcontractors with which we do business and spend the substantial majority of our contracting dollars are located in these geographic areas

#### Step 1, Development of Base Figure

**Please reference Attachment 4 for detailed information including the FY2011-2012 Budget, Projections to FY2014, and data used in the development of the Base Figure.**

1. Contracting opportunity = From FY2011-2012 Budget & Projected to FY2014
2. Weight, (Contracting opportunities) = Percentage of Total Budget
3. NAICS Code = From the PA Unified Certification Program
4. DBE State = From the PA Unified Certification Program
5. Universe Contractors = PA Census Data
6. Ratio = Universe Contractors/DBE State
7. Weighted Ratio = Weight, (Contracting Opportunities) x Ratio

#### Step 2, Adjust Base Figure

The Borough examined all relevant evidence in its jurisdiction to determine what adjustments, up or down, were needed to arrive at the overall goal. Step 2 necessarily took into account other conditions or variables impacting DBEs in the identified market area. The Borough reviewed the past (3) years of DBE program activity, (FY2009-2011), of which the Borough submitted exemption requests to FTA on an annual basis. There is no evidence, or historic median available to alter or adjust the base figure of 8.924% since no DBE participated in the transit program for these operating years. The Borough had worked in coordination with FTA Region III for several years in requesting exemptions in submitting an operating program DBE Goal, therefore the goal of 8.924% will set the standard for the program moving forward.

The Borough did complete an ARRA funded construction project in 2010, and the DBE contract goal of .045% was developed and used. Although advertised, no certified DBEs participated in this contract. The Borough maintains a vehicle and asset inventory with remaining useful life, and condition of capital items. Due to the size and level of the system, the Borough's highest expenditure of capital includes bus procurement. Transit buses in maximum service will meet their useful life in 2017. The Intermodal Transit Facility completed in 2011 will require annual maintenance and the addition of small capital repairs. At this time, the Borough's capital plan includes system technology upgrades, minor equipment, signage, bus fixtures, cylinders, and shelters. Based on this information, the Borough will make no adjustment to the base figure of 8.924% in considering project history, past exemption status, and in our program of projects for the future. However, the Borough will continue to evaluate all operational and capital project planning to assess and further develop our program and goal methodology.

### Race conscious/Race – neutral Breakdown

As required by 49 CFR Part 26.51 (b), the Borough will achieve our goal through 100% race neutral means.

All Borough and PART related staff will be made aware of our efforts to include DBEs, as well as small businesses, and will be provided copies of the DBE Program. All procurements will be examined to enable DBE participation as well as small business utilization. Technical assistance will be provided by the Borough and PART staff upon request to enable the participation of DBEs and small businesses in any available contracts. The Borough and PART will cooperate in an effort to make RFPs or bids attractive to DBEs, simplify or reduce bonding requirements, distribute DBE directories to prime contractors.

BOP/PART will use contract goals to meet any portion of the overall goal BOP/PART 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. We will express our contract goals as a percentage.

### **Appendix A to Part 26**

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were



actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - D.
    1. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
    2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are

reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- I. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

## **Appendix B**

### **Forms 1 & 2 for Demonstration of Good Faith Efforts**

#### **FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

- The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.
- The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_%) is committed to a minimum of \_\_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_

(Signature) Title 18

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_

(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each DBE subcontractor.)