

# **SANDUSKY TRANSIT SYSTEM DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

## **POLICY STATEMENT**

### **Section 26.1, 26.23**

The Sandusky Transit System (STS) 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 STS has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the STS has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the STS 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.

The STS Transit Administrator has been delegated as the DBE Liaison Officer. In that capacity, the Transit Administrator 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 STS in its financial assistance agreements with the Department of Transportation.

STS has disseminated this policy statement to its membership and all of the components of our organization. This DBE policy statement is posted on the City of Sandusky website, and has been mailed to certified DBE business organizations located within Erie County and the following 5 surrounding counties:

1. Ottawa County
2. Huron County
3. Sandusky County
4. Seneca County
5. Lorain County

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Michael J. Will, City Manager

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Date

## Definitions of Terms

### 49 CFR §26.5.

**Affirmative Action** means taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged business enterprises fully in contracts and programs funded by the Department.

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

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

**Applicant** means one who submits an application, request, or plan to be approved by a Department official or by a primary recipient as a condition to eligibility for DOT financial assistance.

**Application** means such an application, request or plan.

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

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

**Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

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

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

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

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

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

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

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

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

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

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

**Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include: The individual’s ownership interest in an applicant or participating DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.

**Primary industry classification** means the four digit Standard Industrial Classification (SIC) code designation, which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

**Primary recipient** means a recipient that receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

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

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

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

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

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

**Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

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

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

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is - (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
5. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
6. Women;
7. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**Tribally owned concerns** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

**You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e. "You must do XYZ" means that recipients must do XYZ).

## **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**

STS 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**

STS will adopt, as a part of this document the definitions contained in 49 CFR § 26.5 for this program (see “Definitions of Terms” section of this document).

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

STS 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, the STS 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)**

STS shall report DBE participation to DOT as follows:

STS shall report DBE participation on a semi-annual basis, using DOT Form 4630. These reports shall reflect payments actually made to DBEs on DOT-assisted contracts.

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

STS 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.

STS shall collect this information in the following ways:

1. All contracts shall require prime bidders to report the names/addresses, and other pertinent information of all firms that gave quotes to them for any subcontracted work.
2. Require all prime bidders to request that firms quoting on subcontracts to report information on their firm directly to STS.
3. Any other method deemed to be sound and accurate at the time of the bid.

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

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

#### Assurance: 26.13(a)

STS 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. STS 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 STS'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 STS 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 (verbatim) will appear in financial assistance agreements with sub-recipients.

#### Contract Assurance: 26.13b

STS 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.

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

Since the STS has received a grant of \$250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year STS will continue to carry out this program until all funds from DOT financial assistance have been expended. STS 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)**

STS has designated the following individual as the DBE Liaison Officer:

*Rosanne Bodner*  
*Sandusky Transit Administrator*  
*222 Meigs Street*  
*Sandusky, Ohio 44870*  
*(Phone) 419-627-5849 (Fax) 419-627-5945*  
*(email) [rbodner@ci.sandusky.oh.us](mailto:rbodner@ci.sandusky.oh.us)*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that STS complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Sandusky City 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 has a staff of zero (0) 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 STS's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Ohio.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the STS's updated directory on certified DBEs.

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

It is the policy of STS 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 contract to make use of these institutions. STS has made **phone calls** to all financial institutions within the City of Sandusky in an effort to identify and use such institutions.

To date we have identified the following such institutions: **NONE**

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

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

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

### **Section 26.31      Directory**

STS, through the City of Sandusky, participates in the State of Ohio's Disadvantaged Business Enterprises Unified Certification Program. Under this program, the Ohio Department of Transportation (ODOT) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. ODOT revises the Directory annually. STS makes the Directory available as follows:

1. A link on the City of Sandusky website.
2. A copy is kept in the Office of the Department of Community Development, 222 Meigs Street, Sandusky, Ohio 44870 at all times.

The Directory may be found in **Attachment #2** of this program document.

### **Section 26.33      Over Concentration**

STS has not identified that over concentration exists in the types of work that DBEs perform.

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

STS has not established a business development program.

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

STS shall take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. STS shall 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. STS shall consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment #3** lists the regulation, provisions, and contract remedies available to STS in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. STS shall monitor, enforce, and verify that work committed to DBEs at contract award is actually performed by the DBEs.
4. STS shall keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

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

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

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment #4** to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) STS shall submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, STS shall consult with the minority, women and general contractor groups as well as other community organizations in an effort to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the STS's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, STS will publish a notice in the newspaper of largest circulation in the City of Sandusky (The Sandusky Register) and on its website of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice, and inform the public that STS and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, this notice will be issued by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

STS will begin using its overall goal on November 1 of each year, unless it has received other instructions from DOT. If STS establishes 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 26.49 Transit Vehicle Manufacturers Goals**

STS 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, STS 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 transit vehicle manufacturer complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment #5** to this program. This section of the program will be updated annually when the goal calculation is updated.

### **Section 26.51(d-g) Contract Goals**

STS shall use contract goals to meet any portion of the overall goal that STS 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 STS's overall goal that is not projected to be met through the use of race-neutral means.

STS shall establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. STS need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

### **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. Examples of good faith efforts are found in Appendix A to Part 26.

The Transit Administrator is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

STS shall ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before it commits to the performance of the contract by the bidder/offeror.

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

STS treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established shall 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 10 days of being informed by STS that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the Sandusky City Manager:

*Michael J. Will*  
*Sandusky City Manager*  
*222 Meigs Street*  
*Sandusky, Ohio 44870*  
*(Phone) 419-627-5844 (Fax) 419-627-5825 (email) [mwill@ci.sandusky.oh.us](mailto:mwill@ci.sandusky.oh.us)*

The Sandusky City Manager 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 the Sandusky City Manager to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The Sandusky City Manager shall 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))

STS shall 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. STS shall 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, STS will require the prime contractor to obtain its 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, STS shall issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, STS may proceed with a breach of contract action pursuant to the terms of the contract and the laws of the State of Ohio.

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 STS 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 1% 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. This prime contractor obligation can be met by completing Form 1 and Form 2 as found in **Attachment #6.**

**Section 26.55      Counting DBE Participation**

STS shall 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**

STS shall 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. STS shall make certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Rosanne Bodner  
Sandusky Transit Administrator  
222 Meigs Street  
Sandusky, Ohio 44870  
(Phone) 419-627-5849 (Fax) 419-627-5945  
(email) [rbodner@ci.sandusky.oh.us](mailto:rbodner@ci.sandusky.oh.us)

STS certification application forms and documentation requirements are found in **Attachment #7** to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The City of Sandusky is a member of a Unified Certification Program (UCP) administered by the Ohio Department of Transportation (ODOT). The UCP will meet all of the requirements of this section. This UCP can be found at **Attachment #8**.

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

#### **Re-certifications 26.83(a) & (c)**

STS was not required to have a DBE program under former part 23 and therefore is not required to participate in any re-certifications.

For firms that STS has certified or reviewed and found eligible under part 26, we will again review their eligibility every three (3) years. These reviews will include the following components:

1. Completion of new application, including Financial Statement(s)
2. Review of application and components

#### **“No Change” Affidavits and Notices of Change (26.83(j))**

STS shall require all DBEs to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with STS’s application for certification.

STS shall also require all owners of all DBEs STS has certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have

been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to STS under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

STS shall require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

STS shall notify all currently certified DBE firms of these obligations by mail on an annual basis. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

#### **Section 26.85      Denials of Initial Requests for Certification**

If STS denies a firm’s application or decertifies it, it may not reapply until 12 months have passed from the date of the denial.

#### **Section 26.87      Removal of a DBE’s Eligibility**

In the event that STS proposes to remove a DBE’s certification, it will follow procedures consistent with 26.87. ***Attachment #9*** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, STS has determined that the Sandusky City Manager will serve as the decision-maker in de-certification proceedings. STS has established an administrative “firewall” to ensure that the Sandusky City Manager will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

#### **Section 26.89      Certification Appeals**

Any firm or complainant may appeal STS decisions in certification matters to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
400 7<sup>th</sup> Street, SW  
Room 2104  
Washington, D.C. 20590

STS shall promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

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

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

STS shall safeguard from disclosure 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, STS shall 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**

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

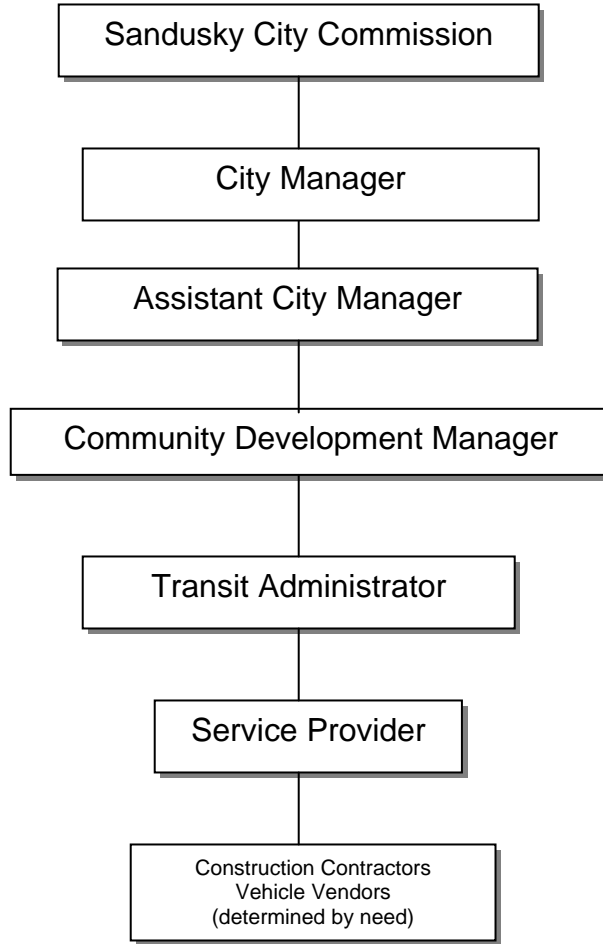
STS shall perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Unified Certification Program
Attachment 9	Procedures for Removal of DBE's Eligibility
Attachment 10	Regulations: 49 CFR part 26

**ATTACHMENT (1)**

**Sandusky Transit System Organizational Chart**



**ATTACHMENT (2)**

**DBE DIRECTORY**

## **ATTACHMENT (3)**

### **Monitoring and Enforcement Mechanisms**

STS 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; and
2. Breach of contract action, pursuant to the laws of the State of Ohio.

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 (4)

### Section 26.45: Overall Goal Calculation

#### Amount of Goal

STS's overall goal for FY 2007 is the following: 1% of the Federal Financial assistance STS will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

#### Methodology used to Calculate Overall Goal

##### **Step 1: 26.45(c)**

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was: 4<sup>1</sup>

The data source or demonstrable evidence used to derive the denominator was: 11,575<sup>2</sup>

When the numerator is divided by the denominator, the STS arrived at the base figure for our overall goal and that number was .0003.

##### **Step 2: 26.45(d)**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal. The certified DBE businesses in the Erie County and the five (5) surrounding counties were contacted for input. None was received. A public hearing was held. No attendees. No requests for an adjustment were received. *No adjustments are necessary at this time.*

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<sup>1</sup> Numerator equals number of DBEs as listed in the Ohio Disadvantaged Business Enterprise Program Unified Certification Program in Erie County and the five (5) surrounding counties.

<sup>2</sup> Denominator equals number of Active Businesses in Erie County and the five (5) surrounding counties as reported in the 2000 Census.

In order to reflect as accurately as possible the DBE participation the STS would expect in the absence of discrimination, it has adjusted its base figure by 0%.

The data used to determine the adjustment to the base figure was: n/a

The reason we chose to adjust our figure using this data was because n/a:

From this data, we have adjusted our base figure to: n/a

## **Public Participation**

STS published our goal information in these publications: The Sandusky Register (date) and the City of Sandusky website ([www.ci.sandusky.oh.us](http://www.ci.sandusky.oh.us))

STS held a public hearing on \_\_\_\_\_ @ \_\_\_\_\_ pm in \_\_\_\_\_ of the City of Sandusky Administration Building, 222 Meigs Street, Sandusky, Ohio 44870. Attached are the documents that were available for distribution to attendees. Unfortunately, there were no attendees, as noted on attached sign in sheet.

STS received comments from these individuals or organizations:

*No Comments*

Summaries of these comments are as follows:

*No Comments*

STS responses to these comments are:

*No Comments*

## **ATTACHMENT (5)**

### **Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation**

STS will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. STS uses the following race-neutral means to increase DBE participation:

1. Provide 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).
2. Provide technical assistance and other services.
3. Refer DBEs and other small businesses to Small Business Development Centers of Ohio at (614) 466-2711 or (800) 848-1300, or via e-mail at [sbdc@odod.state.oh.us](mailto:sbdc@odod.state.oh.us) for supportive services.
4. Distribute the DBE Directory to all potential prime contractors.

STS estimates that, in meeting our overall goal of 1%, we will obtain ½ % from race-neutral participation and ½ % through race-conscious measures.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if STS uses contract goals it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and will track and report race-neutral and race conscious participation separately. For reporting purposes, 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 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.

STS will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

# **ATTACHMENT (6)**

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

*[Forms 1 and 2 will be provided as part of the solicitation documents.]*

### **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 and submits documentation demonstrating good faith efforts.

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

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

By \_\_\_\_\_  
(Signature) Title

**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:

.....  
.....  
.....  
.....

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.)

**ATTACHMENT (7)**

**CERTIFICATION APPLICATION FORMS**

**ATTACHMENT (8)**

**UNIFIED CERTIFICATION PROGRAM**

## **ATTACHMENT (9)**

### **Procedures for Removal of DBE's Eligibility**

Any person may file a written complaint alleging that a currently certified firm is ineligible. The complaint must specify the reasons why the firm is ineligible. The complaint will be investigated by the certifying agency. The records on the firm will be reviewed along with any information or supporting documentation provided by the complainant. The confidentiality of the complainant's identity will be protected as provided in paragraph 26.109(b). Additional information may be requested from the firm to properly investigate the complaint.

If there is a reasonable cause to believe the firm is ineligible, the reviewing agency must provide written notice to the firm setting forth the reasons for the recommendation to find the firm ineligible. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to the certifying agency's attention, it is determined that there is reasonable cause to believe that a currently certified firm is ineligible, written notice must be provided to the firm that the agency proposes to find the firm ineligible setting forth the reasons for the determination.

When the firm is notified there is reasonable cause to remove its eligibility, the firm must be given the opportunity for an informal hearing. The firm must follow the Appeal Process as outlined in the next section of this document.

### **Appeal Process**

A DBE whose eligibility is removed by a recipient may make a written request to appeal that decision within 30 days of the letter of removal. Upon receipt of the request for an appeal, the denying agency must contact ODOT to schedule a hearing. In order to maintain consistency, ODOT will be responsible for scheduling the hearings and for all administrative costs associated with holding the hearing. The removing agency will be responsible for providing legal representation, expert witness testimony and the production of records at its own costs. Full cooperation with the hearing officer is also required.

At the conclusion of the hearing, an official transcript will be provided to the parties. The hearing officer will render a decision within seven (7) days. The recommendation will be forwarded to the parties. Either party may file written objections within ten (10) days of receipt of the hearing officer's report. A copy must be provided to the opposing party by certified mail. The opposing party may submit a written response to objections within

seven (7) days. The denying agency may refer the matter back to the hearing officer for consideration of the objections and responses. The hearing officer shall consider these objections and submit a supplementary report and recommendation to the denying agency within five (5) days after such referral. The denying agency will render a decision within fourteen (14) days after the expiration of the time for submissions from the opposing party and the hearing officer.

The opposing party may appeal an adverse determination by the denying agency as provided under CFR part 26, subpart E pursuant to 49 CFR Section 26.89 to the United States Department of Transportation. A letter must be sent to the Department within 90 days of the date of the denying agency's final decision, containing information and arguments concerning why the denying agency's decision should be reversed.

The firm which is removed from certification will not be eligible to reapply to be certified for a minimum of 12 months from the date it was removed.

# **ATTACHMENT 10**

**United States Code, Title 49: Transportation**  
**PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN**  
**DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**