

Lehigh and Northampton Transportation Authority (LANTA)
Disadvantaged Business Enterprise Program
POLICY STATEMENT
Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of LANTA to ensure that DBEs, as 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 accord 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.

LANTA's Compliance and Diversity Programs Coordinator, currently Sharon Haupt, has been delegated as the DBE Liaison Officer. In that capacity, the Compliance and Diversity Programs Coordinator 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 LANTA in its financial assistance agreements with the Department of Transportation.

LANTA has disseminated this policy statement to its Board of Directors and the Counties of Lehigh and Northampton and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT assisted contracts via mail, electronic mail and this information is posted on the LANTA website: www.lantabus.com.



Owen P. O'Neil, Executive Director, LANTA

4/2/2020



Date

Table of Contents

<u>SUBPART A – GENERAL REQUIREMENTS</u>	3
<u>SUBPART B – ADMINISTRATIVE REQUIREMENTS</u>	5
<u>SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING</u>	9
<u>SUBPARTS D & E – CERTIFICATION</u>	14
<u>SUBPART F – COMPLIANCE AND ENFORCEMENT</u>	14
<u>Appendix A – Definitions</u>	16
<u>Attachment 1 - Organizational Chart</u>	22
<u>Attachment 2 -DBE Directory</u>	23
<u>Attachment 3 - Monitoring and Enforcement Mechanisms/Legal Remedies</u>	24
<u>Attachment 4 - Section 26.45: Overall Goal Calculation</u>	25
<u>1. Base Figure</u>	26
<u>1a. Summary of Method Used to Calculate the Base Figure</u>	26
<u>1b. Subrecipient Opportunities</u>	30
<u>2. Adjustments to Base Figure</u>	30
<u>2a. Past DBE Participation</u>	30
<u>2b. Other Adjustment Factors</u>	31
<u>2c. Annual DBE Expenditure Goals</u>	31
<u>3. Estimated Race-Neutral and Race-Conscience Participation</u>	31
<u>4. Public Comment and Review</u>	32
<u>PUBLIC NOTICE</u>	34
<u>Attachment 5 - Forms for Demonstration of Good Faith Efforts</u>	35
<u>FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION</u>	36
<u>FORM 2: LETTER OF INTENT</u>	37
<u>Attachment 6 - PA Unified Certification Program Contact Information (2/15/12)</u>	38
<u>Attachment 7 – Regulations 49 CFR Part 26</u>	42

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.23 Objectives

The objectives are found in the policy statement on the first page of this program. A signed and dated copy of this policy was circulated throughout the organization (LANTA) and to the DBE and non-DBE business entities with whom that LANTA conducts business activities.

Section 26.3 Applicability

LANTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of SAFTI-LU, 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

LANTA adopts the definitions contained in Section 26.5 of Part 26 for this program. These are included herein as Appendix A.

- 1) These definitions were taken directly from Part 26, Section 26.5 of the FTA DBE regulations and are current as of November 9, 2017.
- 2) LANTA will add and include any new/amended definitions as they are provided by US DOT and/or FTA; and
- 3) We have not included any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

Section 26.7 Non-discrimination Requirements

LANTA 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, LANTA 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

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

LANTA will report DBE participation to *FTA* using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

LANTA will refer to 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 bidder's list approach to calculating overall goals. The source of this list is the Pennsylvania Department of Transportation's list derived from their process included in their adopted Uniform Centralized Program for DBE certification. LANTA will also refer to DBE lists from among its peers in Pennsylvania, in particular SEPTA, the Southeastern Public Transportation Authority, and PAAC – the Port Authority of Allegheny County. LANTA will also include a clause in all contracts requiring prime bidders to report the names/addresses, telephone numbers and contact information of all firms who quote to them on subcontracts for reference for future projects.

All solicitations will contain information about LANTA's DBE program and requirements as well as annual goals and specific goals as they may relate to the project/proposal at hand.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

LANTA 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 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. LANTA'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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language verbatim as it is stated in 26.13(a) will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

LANTA will ensure that the following clause will be used verbatim as it is stated in 26.13(b) in every DOT assisted contract and subcontract:

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

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since LANTA has received grants of \$250,000 or more in FTA planning, capital, and or operating assistance in a federal fiscal year, 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 26.25 DBE Liaison Officer (DBELO)

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

Sharon Haupt, Compliance and Diversity Programs Coordinator
Lehigh and Northampton Transportation Authority (LANTA)
1060 Lehigh Street
Allentown, PA 18103
610-435-5693 x159
shaupt@lantabus-pa.gov

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that LANTA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director/CEO concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 herein.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO is assisted by the Director of Finance and Administration and the Administrative Services Specialist 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 LANTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Board of Directors on DBE matters and achievement.
9. Chairs a DBE Advisory Committee should the need for one arise to effectively implement this program.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Verifies certification of DBE's via the PA Uniform Certification Program (UCP) and acts as liaison to the Uniform Certification Process in the Commonwealth of Pennsylvania.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains LANTA's Bidders' List and Vendor Database and ensures Vendor/Bidder status as certified DBEs is accurate and updated.

The DBELO is assisted by the Director of Finance and Administration, the Director of Planning & Development, the Director of Facilities & Fleet Maintenance, the Supervisor of Facilities & Fleet Maintenance, and the Administrative Services Specialist in:

- Meeting program requirements;
- Development of specifications for bid or proposal documents; and
- Maintaining records and filing reports.

Section 26.27 DBE Financial Institutions

It is the policy of LANTA 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

Prompt Payment: 26.29(a)

LANTA 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 fifteen (15) days from the receipt of each payment the prime contract receives from LANTA. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of LANTA or its designated project manager, engineer or agent.” This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 (thirty) days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval of LANTA or its project manager, engineer or agent. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)”

LANTA has established prompt payment contract clauses and reporting requirements to monitor and enforce that prompt payment and return of retainage is in fact occurring.

LANTA will apply all legal and contract remedies available to it under federal, state, and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.

LANTA 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, sections 103, 107 and 109. LANTA will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Section 26.31 Directory

LANTA refers to the Pennsylvania Uniform Certification program directory, which 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. A link to the PA Uniform Certification program directory is provided on the LANTA website, lantabus.com.

Section 26.33 Overconcentration

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

Section 26.35 Business Development Programs

LANTA has not established a business development program. We will re-evaluate the need for such a program every 36 months.

Section 26.37 Monitoring and Enforcement Mechanisms

LANTA will apply all legal and contract remedies available to it under federal, state, and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.

LANTA 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. LANTA will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

LANTA 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

LANTA 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). Small business program elements include, but are not limited to:

- Removal of unnecessary and unjustified bundling of contract requirements;
- Examining insurance requirements on contracts with the intent of reducing unnecessary insurance requirements, when feasible;
- Simplifying or reducing bonding requirements where feasible;
- Requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation;
- Development of acquisition strategies and structuring procurements to facilitate bids by and awards to small business consortia or joint ventures;
- Letting prime contracts (as appropriate) of a size that small businesses can reasonably compete for and perform;
- Hosting periodic workshops for small businesses providing technical assistance on how to prepare a successful proposal and how to certify as a small-business; and
- Providing consideration to small businesses, when evaluating proposals.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

Amount of goal: LANTA's overall goal for FFY 2020 – 2022 is 4.7% of the federally assisted projects identified in our FY2020-FY2022 goal methodology. This goal is exclusive of FTA funds used for the purchase of transit vehicles; under separate goal requirements for transit vehicle purchases. LANTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurement, to certify that it has complied with DBE requirements for vehicle manufacturers. In addition, this goal excludes other federally assisted procurements, in accordance with FTA guidance. For more information on LANTA's FFY 2020 – 2022 goal methodology, please see Attachment 4, below.

Summary of method used to calculate the goal: Base figure: The Lehigh and Northampton Transportation Authority's FFY 2020-2022 base figure, 4.70% of available Federal financial assistance, was calculated using Method 1 from 26.45, as follows:

As a first step in the process, LANTA's Capital Grants Management Team reviewed the projects on the metropolitan area's TIP for FFY 2019 through 2022. The team identified the projects to which DBE requirements apply and also have the potential for DBE participation were identified. Second, the NAICS codes for the types of firms that could perform the work necessary for the identified projects were determined using the NAICS directory (<https://www.naics.com/six-digit-naics/>). The number of firms and eligible Lehigh Valley DBE businesses within the NAICS codes, were then derived from the Commonwealth of Pennsylvania DBE directory (PA Unified Certification Program <https://www.paucp.com/>) and LANTA's vendor database (<http://www.lantabus.com/vendor-registration-form/>). The market area used for PA Unified Certification Program database was LANTA's service area of Lehigh and Northampton Counties, Pennsylvania. The type of work envisioned is routinely provided to LANTA by firms in Lehigh and Northampton Counties. These NAICS code(s) for each project was then identified along with the number of total firms and DBEs. Next, the percentage of federal funds to be expended for each project were identified.

The final base figure of 4.70% represents the relative availability of DBEs in all categories within Lehigh and Northampton Counties.

Adjustment to base figure: Using the base figure as a benchmark, LANTA is adjusting its goal to 4.7% for several reasons.

The contracting opportunities in the upcoming triennial period are similar in scope and project size to contracting opportunities in the previous triennial period. In addition, the DBE participation rate for the three federal fiscal years in LANTA's previous triennial review period was reviewed and the total DBE Participation during the three-year reporting period was identified as 3.83%. However, LANTA's DBE Participation, during the prior period underperformed our goal. LANTA's staff have increased our outreach efforts and have implemented new programs and procurement policies since 2017 and staff our confident the

goal will be attained for this period. Thus, in consideration of our increased efforts, **our Past DBE Participation will not be used to adjust our goal.**

Goal submission process:

LANTA will submit its three-year overall goal to DOT on or before August 1 every third year on the cycle established by FTA. LANTA will begin using its overall goal at the start of the federal fiscal year, unless otherwise directed by DOT, or, for goals established on a project basis, by the time of the first solicitation for a DOT assisted contract for the project.

Before establishing its triennial overall goal, LANTA will consult with local business groups, including the area's Chambers of Commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, effects of discrimination on opportunities for DBEs, and LANTA's efforts to establish a level playing field for the participation of DBE's.

Following this consultation, LANTA will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours for 30 calendar days following the date of the notice and that LANTA and DOT will accept comments on the goals for 45 calendar days following the date of the notice. LANTA will publish the goal in the local newspaper, "Passenger Transport," and by distribution to any available business groups and minority focus media, trade publications, websites, etc. The notice will state that comments, requests to review the proposal or for copies of the proposal and the rationale used in its development should be addressed to LANTA, 1060 Lehigh Street, Allentown, PA 18103. LANTA's overall goal submission to DOT will summarize information/comments received during the public participation process and LANTA's responses to those comments.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on LANTA Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Complete analysis within 90 days of the end of the affected fiscal year, retain the analysis and corrective actions in our records for three years, and make it available to FTA on request for their review.

Section 26.49 Transit Vehicle Manufacturers Goals

LANTA 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.

Section 26.51 Meeting Overall Goals/Contract Goals

Breakout of Estimated Race Neutral and Race Conscious Participation: LANTA will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation, using the following race neutral means to increase DBE participation:

- Encouraging prime contractors to subcontract portions of the work where feasible;
- Arranging solicitations, time to present bids/proposals, bid quantities, specifications, quantities and delivery schedules to facilitate DBE and small business participation where feasible;
- Simplifying or reducing bonding requirements where feasible;
- Providing information to bidders on potential subcontractors where feasible;
- Offering instructions on bid specifications, procedures, and general bidding requirements;
- Hosting periodic workshops for DBE's and non-DBE's providing technical assistance on how to prepare a successful proposal and how to certify as a DBE; and
- Examining insurance requirements on contracts with the intent of reducing unnecessary insurance requirements, when feasible.

LANTA's intent is to meet its overall goal of 5.5% from race neutral participation. Race conscious measures will only be used if goals cannot be met and there is sufficient number of DBE contractors available to assure competition. This approach to race neutral and race conscious DBE participation is based on past private sector DBE participation.

LANTA 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 a DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Section 26.53 Good Faith Efforts Procedures

LANTA will treat bidder/offeror compliance with good faith efforts requirements as a responsibility matter. Each solicitation with an established contract goal will require bidders/offerors to submit the following information either with the bid/proposal or within a specified number of calendar days, to be identified in the bid or proposal solicitation, after the bid/proposal submission deadline.

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

Where contract goals are established, bidders/offerors are obligated to demonstrate that good faith efforts to achieve the goal have been made, by either meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26 and will be made available upon request.

The DBELO and contract administrator are 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. LANTA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a contract is awarded to a bidder/offeror.

If LANTA notifies a bidder/offeror that it has not documented sufficient good faith efforts in meeting contract goals, the bidder/offeror may request administrative reconsideration. A bidder/offeror request for administrative reconsideration must be made in writing within seven (7) calendar days of the bidder/offeror's receipt of LANTA's notification that it is not responsive because it has not documented sufficient good faith efforts. The request must be submitted to:

Sharon Haupt, Compliance and Diversity Programs Coordinator
Lehigh and Northampton Transportation Authority
1060 Lehigh Street, Allentown, PA 18103.

However, if Ms. Haupt is acting as contract administrator for a particular contract, and therefore has participated in the original determination that the bidder/offeror did not sufficiently document good faith efforts, Mr. Owen P. O'Neil, Executive Director, shall be named as the individual to whom the request for administrative reconsideration should be directed.

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 reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. LANTA 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.

If a DBE is terminated or otherwise has failed to complete its work on a contract, the prime contractor must demonstrate good faith efforts to replace the DBE with another certified DBE, to the extent needed to meet the contract goal. The prime contractor must notify the DBELO immediately of the DBE's inability or unwillingness to perform. Where a replacement DBE is proposed, the prime contractor is required to obtain prior approval from LANTA for the substitution and to provide copies of new or amended subcontracts. Where no replacement DBE is found, the prime contractor must document its good faith efforts to locate another DBE, in the same manner and by the same means as good faith efforts are identified for prime contract awards. If the contractor fails or refuses to comply in the time specified, LANTA will issue an order stopping all or part of outstanding payment/work until satisfactory action has been taken. If the contractor still fails to comply within twenty-one (21) calendar days after the date that such an order is issued, LANTA may initiate termination for default proceedings.

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 LANTA 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.

DBE contract goals may be established for individual contracts. 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.

When a contract goal is established, 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; and
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.

SUBPARTS D & E – CERTIFICATION

Section 26.81 Unified Certification Programs

LANTA is a member of a Unified Certification Program (UCP) administered by the Pennsylvania Department of Transportation. The UCP will meet all of the requirements of this section. LANTA will use and count for DBE credit only those DBE firms certified by the Commonwealth of Pennsylvania's *UCP*.

Section 26.83-26.91 Procedures for Certification Decisions

A copy of the Pennsylvania Department of Transportation's certification procedures and/or UCP program contact information is included in Attachment 6 - PA Unified Certification Program Contact Information. Where appropriate, LANTA will follow the certification processes of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts

Any firm or complainant may appeal a PA Unified Certification Program decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., count a subcontractor towards a contract goal).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

LANTA will 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, LANTA 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

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

LANTA will perform interim audits of contract payments to DBEs. These audits 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.

Confidentiality

LANTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. Only authorized staff of the Lehigh and Northampton Transportation Authority or federal funding sources will have access to such confidential information. However, unless otherwise prohibited by federal, state, or local law, names of DBEs, type and dollar amount of participation and status of certification will be considered public information. Notwithstanding any contrary provisions of state or local law, LANTA 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.

Appendix A – Definitions:

What do the terms used in this document mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

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 Metlaktla 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.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

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. For purposes of this part, a lease is considered to be a contract.

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

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

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.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State 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.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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 most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient, which 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. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

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.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

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 has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

- (ii) “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;
- (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- (iv) “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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

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

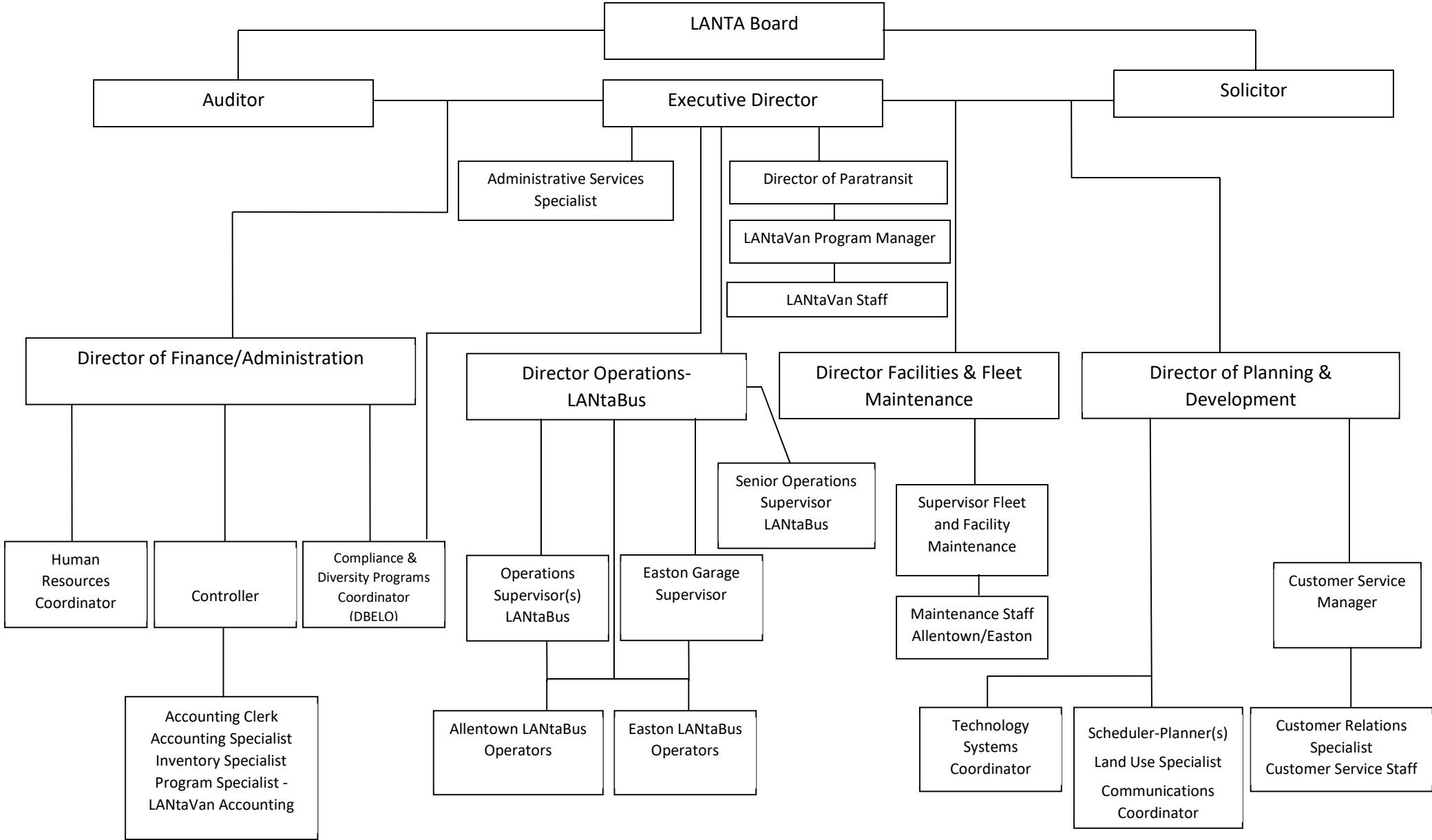
You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

ATTACHMENTS

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory references
- Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
- Attachment 4: Goal Setting Methodology
- Attachment 5: Good Faith Efforts Forms
- Attachment 6: Certification Forms
- Attachment 7: DBE Regulation, 49 CFR Part 26

Attachment 1 - Organizational Chart



October 12, 2017

Executive Staff

Attachment 2 -DBE Directory

DBE Directory – PA UCP

<http://www.paucp.com/>

Pennsylvania Departments of Transportation's DBE Supportive Services Center:

<http://www.pennsylvaniadbe.com>

Attachment 3 - Monitoring and Enforcement Mechanisms/Legal Remedies

LANTA 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. Breach of contract action, pursuant to Enforcement actions pursuant to Pennsylvania Unified Program for Disadvantaged Business Enterprises.

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

LEHIGH AND NORTHAMPTON TRANSPORTATION AUTHORITY Disadvantaged Business Enterprise Program

CALCULATION OF GOAL FFY 2020-2022

1. Base Figure

This section describes the calculation of the Lehigh and Northampton Transportation Authority's FFY 2020-2022 base figure for the DBE participation goals prior to adjustments.

1a. Summary of Method Used to Calculate the Base Figure

As a first step in the process, LANTA's Capital Grants Management Team & Compliance Working Group reviewed the projects on the metropolitan area's TIP for FFY 2019 through 2022. The team identified the projects to which DBE requirements apply and also have the potential for DBE participation. This list is provided in the table below.

TIP Project #	Project Title	DBE Requirements/ Potential for Participation
95008	Purchase Van/Minibuses	No
95010	PM Maintenance	No
95015	ADA Paratransit Service Capitalization	No
95180	Service Vehicle Replacement	No
95019	Heavy Duty Bus Purchase	No
95178	ITS and Security Projects	Yes
95183	Sign, Shelters and Enhancements	Yes
106530	LANTA Enhanced Bus / BRT Project	Yes
106703	LANTA Operating Assistance	No
106704	Shared Ride Operating Assistance	No
110171	Associated Capital Maintenance Items	No
110172	Facility Improvements and Equipment	Yes

Second, LANTA's Compliance Program Coordinator, Director of Finance & Administration—serving as LANTA's DBE Liaison Officer—and LANTA's Senior Director of Capital Asset Planning and Maintenance reviewed the planned projects for these line items to determine the nature of the projects, the timing of their execution, and project budgets. In addition, pending projects that are funded from by FFY19 grants, for which the projects have yet to occur were reviewed for inclusion, as the transactions would occur and costs would be incurred during FFY20. The total amount of federal funding to be used to complete these projects totaled \$354,613 in FFY 2020; \$1,412,751 in FFY 2021; and \$839,200 in FFY 2022.

TIP Project #	Project Title	FFY 2020		FFY 2021		FFY 2022	
		Fed.	Federal	Fed.	Federal	Fed.	Federal
95178	Transit Center Security Services	5307	\$96,000.00	5307	\$96,000.00	5307	\$96,000.00
95183	Bus Shelter Program	5307	\$14,060.00	5307	\$16,000.00	5307	\$16,000.00
106530	LANTA Enhanced BRT Project – Engineering and Architectural Design			5307	\$1,040,751.00	5307	\$1,167,200.00
106530	Project Component: Rolling Stock Procurement Adjustment						-\$440,000.00
110172	Facility Improvements – Engineering and Architectural Design Services	5307	\$181,600.00	5307	\$260,000.00		
	Allentown Transportation Center Concrete Replacement Project		\$22,953.00				
	Lehigh Valley Mall Transit Center Concrete Replacement Project		\$40,000.00				
Total Fed Funding - DBE Potential Projects			\$354,613.00		\$1,412,751.00		\$839,200.00

Next, the NAICS codes for the types of firms that could perform the work necessary for the identified projects were determined using the NAICS directory <https://www.naics.com/six-digit-naics/> . These codes include:

Relevant NAICS Codes for Identified Projects

NAICS	Description
541310	Architectural services
541330	Engineering services
237310	Concrete paving (i.e. highway, road, street, public sidewalk)
561612	Security Guards and Patrol Services
332311	Prefabricated Metal Building and Component Manufacturing
423390	Other Construction Material Merchant Wholesalers; Architectural metalwork merchant wholesalers
236220	Commercial and Institutional Building Construction; Addition, alteration and renovation, commercial and institutional building

The number of firms and eligible DBE businesses within the NAICS codes, were then derived from the Commonwealth of Pennsylvania DBE directory (PA Unified Certification Program <https://www.paucp.com/>) and LANTA's vendor database <http://www.lantabus.com/vendor-registration-form/>). The market area used for PA Unified Certification Program database differed for each project, depending on the nature of the contracted services and the project's ability to attract firms ready, willing, and able to provide services in our geographic area, regardless of their physical location. LANTA staff examined previous procurements and ongoing procurements of comparable scope and size for each industry service to determine where ready, willing, and able firms may be located for comparison to the total number of firms of that industry in the same area.

For Concrete Paving the area was determined to be LANTA's service area of Lehigh and Northampton Counties, Pennsylvania, based on bids received from prior projects. The type of concrete work envisioned is routinely provided to LANTA by firms in Lehigh and Northampton Counties. Whereas, for Engineering and Security, a larger radius of ready, willing, and able firms was envisioned, due to the proposals previously received by LANTA in response to RFP's for this service. When calculating the relative

availability of DBE firms for Engineering and Security, staff included the following Pennsylvania Counties: Berks, Bucks, Chester, Carbon, Lehigh, Monroe, Montgomery, Northampton, and Schuylkill, as well as the following New Jersey Counties: Mercer, Somerset, and Warren. LANTA staff contacted SEPTA's DBE Program Office Director, in their role as a custodian of PA's Unified Certification Program and a certifying agency, requesting an exported listing of all DBE firms from the specified counties for each NAICS code to provide an apples-to-apples comparison with the Census' County Business Patterns Report numbers for those NAICS codes.

Eligible Firms and DBE's in Relevant NAICS Codes

NAICS	Description	DBE Firms – PA UCP	All Firms	Relative Availability of DBE's
561612	Security Guards and Patrol	3	111	0.0268
332311	Prefabricated Metal Building and Component Manufacturing	0	12	0.0000
423390	Other Construction Material Merchant Wholesalers; Architectural metalwork merchant wholesalers	4	56	0.0714
541330	Engineering services	38	816	0.0441
237310	Concrete Paving	5	18	0.2778
541310	Architectural services	5	189	0.0244
236220	Commercial and Institutional Building Construction; Addition, alteration and renovation, commercial and institutional building	1	78	0.0128
	Total	56	1280	0.0438

These NAICS code(s) for each project was then identified along with the number of total firms and DBEs.

Project	Project Title	NAICS Codes	DBE Firms	All Firms	Relative Availability of DBE's
95178	Transit Center Security Services	561612	3	111	0.0270
95183	Bus Shelters Program – Prefabricated Metal Building and Component Manufacturing	332311, 423390	4	68	0.0588
95183	Bus Shelters Program – Engineering & Design Services	541330	38	816	0.0466
95183	Bus Shelters Program – Concrete Paving	237310	5	18	0.2778
95183	Bus Shelters Program – Installation of Shelters	236220	1	78	0.0128
106530	LANTA Enhanced BRT Project: Engineering and Design Services	541330	38	816	0.0466
106530	LANTA Enhanced BRT Project: Architectural Services	541310	5	189	0.0265
110172	Facility Improvements Project Engineering and Design Services	541330	38	816	0.0466
110172	Facility Improvements Project: Architectural Services	541310	5	189	0.0265

	Transit Center Concrete Replacement Projects	237310	5	18	0.2778
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Project	Project Title	DBE Firms	All Firms	Relative Availability of DBE's	Weight (% of Total DOT Funds)	Calc.
95178	Transit Center Security Services	3	111	0.0270	11.05%	0.0030
95183	Bus Shelters Program – Prefabricated Metal Building and Component Manufacturing	4	68	0.0588	0.92%	0.0005
95183	Bus Shelters Program – Engineering & Design Services	38	816	0.0466	0.58%	0.0003
95183	Bus Shelters Program – Concrete Paving	5	18	0.2778	0.16%	0.0004
95183	Bus Shelters Program – Installation of Shelters	1	78	0.0128	0.12%	0.0000
106530	LANTA Enhanced BRT Project: Engineering and Design Services	38	816	0.0466	54.26%	0.0253
106530	LANTA Enhanced BRT Project: Architectural Services	5	189	0.0265	13.57%	0.0036
110172	Facility Improvements Projects: Engineering and Design Services	38	816	0.0466	13.55%	0.0063
110172	Facility Improvements Project: Architectural Services	5	189	0.0265	3.39%	0.0009
	Transit Center Concrete Replacement	5	18	0.2778	2.42%	0.0067
Total						0.0470
Total Expressed as a Percent						4.70%

Next, the percentage of federal funds to be expended for each project were identified:

Project	Project Title	FFY 20	FFY 21	FFY 22	Total	% Total
95178	Transit Center Security Services	\$96,000.00	\$96,000.00	\$96,000.00	\$288,000.00	11.05%
95183	Bus Shelters Program - Prefabricated Metal Building and Component Manufacturing	\$8,000	\$8,000	\$8,000	\$24,000.00	0.92%
95183	Bus Shelters Program - Engineering & Design Services	\$5,000	\$5,000	\$5,000	\$15,000.00	0.58%
95183	Bus Shelters Program - Concrete	\$1353.33	\$1353.33	\$1353.33	\$4,060.00	0.16%
95183	Bus Shelters Program - Installation / Erection of Prefabricated Metal Buildings / Shelters	\$1,000	\$1,000	\$1,000	\$3,000.00	0.12%
106530	Enhanced Bus / BRT Project - Engineering and Design Services	--	\$832,600.80	\$581,760.00	\$1,414,360.80	54.26%
106530	Enhanced Bus / BRT Project - Architectural Services	--	\$208,150.20	\$145,440.00	\$353,590.20	13.57%
110172	Facility Improvements - Engineering and Design Services	\$145,280.00	\$208,000.00	--	\$353,280.00	13.55%
110172	Facility Improvements - Architectural Services	\$36,320.00	\$52,000.00	--	\$88,320.00	3.39%
	Transit Center Concrete Replacement Projects	\$62,953.00	--	--	\$62,953.00	2.42%
Total		\$355,906.33	\$1,412,104.33	\$838,553.33	\$2,606,564.00	100.00%

Base figure was calculated using “Method 1” from Section 26.45 of the DBE Regulations, as amended. The table below shows the calculation:

1b. Subrecipient Opportunities

LANTA does not have any subrecipients of federal grant funds.

2. Adjustments to Base Figure

2a. Past DBE Participation

The contracting opportunities in the upcoming triennial period are similar in scope and project size to contracting opportunities in the previous triennial period. In addition, the DBE participation rate for the three federal fiscal years in LANTA's previous triennial review period was reviewed and the total DBE Participation during the three-year reporting period was identified as 3.83%. However, LANTA's DBE Participation, during the prior period underperformed our goal. LANTA's staff have increased our outreach efforts and have implemented new programs and procurement policies since 2017 and staff are confident the goal will be attained for this period. Thus, in consideration of our increased efforts, **our Past DBE Participation will not be used to adjust our goal.**

Report	Period Ending	Section	Total Contracts	Total Dollars	DBE Contracts	DBE Payments
12/1/2018	9/30/2018	Ongoing	6	44,934	0	0
12/1/2018	9/30/2018	Completed	5	93,606	0	0
6/1/2018	3/31/2018	Ongoing	1	2,560	0	0
6/1/2018	3/31/2018	Completed	12	89,761	1	2,930
12/1/2017	9/30/2017	Ongoing	38	1,254,622	0	0
12/1/2017	9/30/2017	Completed	0	0	0	0
6/1/2017	3/31/2017	Ongoing	11	84,069	1	2,451
6/1/2017	3/31/2017	Completed	0	0	0	0
12/1/2016	9/30/2016	Ongoing	10	244,274	1	6,306
12/1/2016	9/30/2016	Completed	0	0	0	0
6/1/2016	3/31/2016	Ongoing	0	0	0	0
6/1/2016	3/31/2016	Completed	1	60,143	1	60,143
Total Federal Dollars FFY16-18				1,873,969	Total DBE:	71,830.00

Between October 1st 2015 and September 30th 2018, LANTA incurred total expenditures of federal dollars on eligible expenses of \$1,873,969. Of the \$1,873,969 dollars of federal dollars expended on federally assisted projects, \$71,830 were payments made to DBE's, for a participation rate of 3.83% during the three fiscal years.

This number is less than the calculated base figure of 5.27% and adjusted goal of 5.5% for FFY16-19. LANTA staff anticipate that our participation rate for FFY19 will also fall below the 5.27% base figure and 5.5% adjusted goal. Despite LANTA's prior performance in relation to our goal, the prior data will not be used to adjust our upcoming goal, due to increasing outreach efforts—including hosting a DBE Certification Workshop on October 10th, 2019. LANTA has increased our DBE Outreach efforts and has seen progress in our participation, since FFY17. LANTA's DBE Participation has improved in part due to LANTA's attendance at every Greater Lehigh Valley Chamber of Commerce DBE event, co-hosting Small Business Workshops with regional public agencies, our implementation of a Small Business Program, and our adoption of PennBid for electronic document and bid management for all procurement. Considering LANTA's recent progress and the fact the majority of federal expenditures are anticipated to be for on-call engineering and architectural design services over the next three fiscal years, staff believe

that the calculated base goal should not be lowered to adjust for Past DBE Participation.

2b. Other Adjustment Factors

LANTA has elected to not make adjustments to the figure based on the following observations:

- LANTA could not identify any disparity studies designed to investigate the existence of discrimination in contracting conducted in its market area. In an effort to ensure that all evidence available in LANTA's jurisdiction relating to potential disparities were considered, LANTA staff contacted the US Small Business Administration, the Small Business Development Center at Lehigh University, and the Pennsylvania Department of General Service's Bureau of Diversity, Inclusion and Small Business Opportunities. The only study available was a statewide report, whose data was unable to be parsed to a level of detail to be of value.
- LANTA could find no information supporting a conclusion that there are statistical disparities in the ability of DBE's to get financing, bonding, and insurance. LANTA's Solicitor conducted a search of any lawsuits with the Pennsylvania Attorney General's office regarding discrimination in public contracting in LANTA's market area, or lawsuits regarding discrimination in granting access to credit, bonding or insurance to women or minority owned businesses in LANTA's region. No such litigation was found;
- LANTA reviewed a report completed by the Community Action Committee of the Lehigh Valley (CACLV) entitled *Justice for All – Challenging Wealth Disparity in the Lehigh Valley*. The report cites barriers to homeownership for minority residents in Lehigh and Northampton Counties but does not identify barriers for minority owned businesses. LANTA consulted the authoring organization of the report to determine if any information has been collected regarding barriers to financing, bonding, and insurance for minority owned businesses in the region. No such report has been assembled and no statistics are available; and
- LANTA was not able to identify any other data that could help estimate the percentage of work that DBEs would be likely to obtain in the absence of discrimination.

2c. Annual DBE Expenditure Goals

Accordingly, the annual DBE expenditure goals for FFY 2020-2022 are as follows using the goal figure of 4.70%:

Annual DBE Expenditure Goals				
	FFY 20	FFY 21	FFY 22	Total
Annual Identified Expenditures	354,613	1,412,751	839,200	2,606,564
Annual DBE Goal	16,666.81	66,399.30	39,442.40	122,508.50

Recent history indicates that DBE participation in specific projects and activities at LANTA suggest that the goal should be attainable given the projects identified as having potential for DBE participation. This includes DBE vendors currently under contract to perform the types of activities envisioned for the identified projects.

3. Estimated Race-Neutral and Race-Conscience Participation

The determination of participation rates is reflective of the discussion set forth above. Contracts awarded on race-neutral means are expected to represent 100% of the DBE participation. If, through monitoring of awards, it appears that LANTA will fall substantially short of its goal, LANTA in consultation with FTA may introduce race-conscience solicitations.

4. Public Comment and Review

The public notice shown in Appendix A was placed in the Morning Call on Friday June 28, 2019. In addition, this notice was sent via email by the Greater Lehigh Valley Chamber of Commerce to its members of its African-American, Hispanic, and Women's Business Councils. This email notification was sent to over 2,700 businesses in the area. The notice was also sent to the Greater Reading Chamber of Commerce, the Slate Belt Chamber of Commerce, the Greater Scranton Chamber of Commerce, the Upper Bucks Chamber of Commerce, and the Schuylkill Chamber of Commerce, due to the likelihood of business participation from those regions. The public notice was also placed on the website of the Metropolitan Planning Organization at lvpc.org. Lastly, the notice, along with the policy was placed on LANTA's website, lantabus.com, on June 27, 2019.

For consultative purposes, the draft DBE goals methodology was presented to LANTA's Board of Directors on June 18, 2019. The public comment period was available from June 28, 2019 until July 29th, 2019.

The public notice was shared with the Lehigh Valley Black News Network. The Lehigh Valley Black News Network is an e-newsletter & blog designed to provide information regarding events and community information related to the connection and inclusion of communities of African-Black-African American descent throughout the Lehigh Valley and the State of Pennsylvania. The LVBNN e-letter is distributed and viewed by over 5000 internet readers from the Lehigh Valley Region, parts of Philadelphia, Harrisburg, and Reading. As a result of this outreach, LANTA staff were made aware of a disparity study from 2018 commissioned by the Pennsylvania Department of Transportation. LANTA staff reviewed the study, including Table F-13, which examined Prime contracts and subcontracts with federal and state funding by PennDOT and local agencies in LANTA's market area of PennDOT District 5 (Monroe, Carbon, Schuylkill, Berks, Lehigh, and Northampton counties). Unfortunately, the data in this report was not to the level of detail that it would correspond to the type of analysis required for projects in LANTA's budget, as data was either aggregated for all projects or when project specific was for all spending statewide. LANTA contacted Milligan & Company, as they were listed as a "Study Team Member" for the PennDOT report. Milligan & Company staff noted that the PennDOT study was not of the detail necessary to be used in a Step-2 adjustment of LANTA's goal. The study's analysis of PennDOT District 5 did not show an under-utilization for minority and women owned businesses in the region by PennDOT and local agencies between July 1, 2011 and June 30th 2016. Given the 106.4% utilization for minority and woman-owned businesses in the market area during the five-year period examined, LANTA staff believe that this study does not indicate that a Step 2 adjustment is necessary for LANTA's market area.

LANTA staff also met with representatives from the Lehigh Valley Black News Network, the Pennsylvania Diversity Coalition (PADC), and ProRank Business Solutions to hear their feedback and recommendations in relation to LANTA's DBE Goal Calculation. Staff invited the parties to the meeting to provide written feedback and recommendations for LANTA's consideration in forming its DBE Plan. As of the date of this submission, no written feedback was provided during the comment period. LANTA will continue to send e-mail notices to the LVBNN notifying them regarding procurement opportunities with LANTA, which LVBNN may elect to share with their members or publish in their e-newsletter and/or blog.

On July 9th, 2019, this draft document was presented to the Lehigh Valley Economic Development Corporations' (LVEDC) Local Sourcing and Business Diversity Council. The members were asked to provide any comments or suggestions that they may have. Members of the council had no comment on the Goal calculation or methodology and were not aware of any disparity studies for our local market area. However, general feedback included actions LANTA already undertakes, including participating in LVEDC's Meet the Buyers Expo and contacting staff at the Community Action Committee of the Lehigh

Valley (CACLV) for feedback on disparity studies. LANTA maintains active correspondence with CACLV and had already scheduled an in-person meeting. In addition, members of the council suggested that LANTA send procurement notices to the Small Business Development Center (SBDC) at Lehigh University to be shared with their mailing list. LANTA agreed to forward e-mail notices regarding our procurements to the SBDC. As a result of the outreach effort LANTA's Administrative Services Manager, who manages procurement for LANTA will be joining the Local Sourcing and Business Diversity Council to maintain active engagement and extend our outreach.

On July 15th LANTA staff participated in a conference call with Juan Camacho, Esq., an attorney who is a member of the Local Sourcing and Business Diversity Council. Mr. Camacho inquired as to whether legal services would be an expenditure that should be included in our DBE Goal Calculation. LANTA staff explained that the size of our capital projects typically does not allow for breaking out legal components and that the overwhelming majority of our legal services is paid for operating funds and does not involve federal funding, due to not being related to capital projects.

On July 16th LANTA staff met with senior staff from the Community Action Committee of the Lehigh Valley, the agency which had authored the 2014 study *Justice for All – Challenging Wealth Disparity in the Lehigh Valley* to discuss studies of contracting disparities that have been conducted in the Lehigh Valley, or neighboring regions. CACLV staff noted that safety and soundness issues often take precedence over community reinvestment and that large companies bundling project contracts is one of the biggest obstacles for small businesses and minority owned firms. However, they noted that they were not aware of any additional disparity studies conducted in our local market area and that it was their perception that banks in the region were not discriminating against minority owned businesses. As a result of the meeting, LANTA will be sharing our procurement notices with CACLV and The Rising Tide Community Loan Fund to allow their Small Business Coordinators to share our procurement notices with their mailing list. Established in 2001, Rising Tide's mission is and has always been to identify small business and community development credit needs that stifle the creation of economic opportunity in low-to-moderate-income communities of the Lehigh Valley and to meet those needs with affordable credit products. In addition, LANTA staff will be inviting CACLV staff to participate in our procurement workshop planned for September.

LANTA also contacted the members of the Boards of the Greater Lehigh Valley Chamber of Commerce's Hispanic Chamber of Commerce, African American Business Leaders Council, and Women's Business Council to solicit comments and suggestions regarding LANTA's draft DBE goals. None of the parties contacted identified any issues that required a response regarding the draft goals or the methodology used.

The final goal was reviewed by LANTA Board's Finance and Administration Committee on August 13, 2019. This meeting was publicly advertised and the agenda for the meeting was posted on LANTA's website and was available to the public. In addition, per FTA requirements, the draft goals were put for approval by LANTA's Board of Directors at its August 20, 2019 meeting. The August 20th Board of Directors meeting was publicly advertised and the agenda for the meeting was posted on LANTA's website and was available to the general public.

Appendix A

PUBLIC NOTICE DBE GOAL FOR FEDERAL FISCAL YEARS 2020-2022

The Lehigh and Northampton Transportation Authority (LANTA) hereby announces its proposed Federal Fiscal Years 2020 through 2022 goal of four and six-tenths percent (4.6%) percent for Disadvantaged Business Enterprise (DBE) participation. A description of the goal and how it was determined is available for review during normal business hours, for 30 calendar days following the date of this notice by contacting Randy Lease, Director of Finance & Administration, LANTA, 1060 Lehigh Street, Allentown, PA 18103, 610-435-5693 and through the LANTA website, <https://www.lantabus.com/dbe-program/>.

Written comments on the goals may be submitted until July 29, 2019.

Interested DBE firms are encouraged to register in LANTA's vendor database at <http://www.lantabus.com/vendor-registration-form/>

By: Randy Lease
Director of Finance & Administration
June 28, 2019
Appendix A

PUBLIC NOTICE

DBE GOAL FOR FEDERAL FISCAL YEARS 2017-2019

The Lehigh and Northampton Transportation Authority (LANTA) hereby announces its proposed Federal Fiscal Years 2017 through 2019 goal of 5.28 percent of applicable federal funds for Disadvantaged Business Enterprise (DBE) participation. A description of the goal and how it was determined is available for review during normal business hours, for 30 calendar days following the date of this notice by contacting:

Owen P. O'Neil, Executive Director, LANTA,
1060 Lehigh Street
Allentown, PA
18103, Phone:
610-435-4052

or through the LANTA website, lantabus.com/dbe-program/

Written comments on the goals may be submitted until August 31, 2016 to the address above or to oonil@lantabus-pa.gov.

Interested DBE firms are encouraged to register in LANTA's vendor database at <http://www.lantabus.com/vendor-registration-form/>

By: Owen P. O'Neil
LANTA Executive Director
July 26, 2016

Attachment 5 - Forms 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

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 6 - PA Unified Certification Program Contact Information (2/15/12)

PennDOT certification process: March 1, 2011

The following is the contact information of all certifying participants.

Contact Information

Organization	Address	Phone	Fax	Email
Allegheny County Dept. of MBE/WBE/DBE	204 County Office Building 542 Forbes Avenue Pittsburgh, PA 15219	412-350-4309	412-350-4915	mwdbe@alleghenycounty.us
PA Department of Transportation (PENNDOT)	Bureau of Equal Opportunity P.O. Box 3251 Harrisburg, PA 17105-3251	717-787-5891	717-772-4026	penndotucpinfo@pa.gov
Port Authority	Diverse and Disadvantaged Business Enterprises 345 Sixth Avenue Pittsburgh, PA 15222	412-566-5257	412-566-5434	cwilliams@portauthority.org
Southeastern Pennsylvania Transportation Authority (SEPTA)	DBE Program Office 1234 Market Street 11th Floor Philadelphia, PA 19107	215-580-7278	215-580-7261	DBEProgram@septa.org
City of Philadelphia Office of Business Diversity	Philadelphia International Airport DBE Program Office Executive Offices - Terminals D & E, Third Floor Philadelphia, PA 19153	215-937-1801	215-937-5497	kathleen.padilla@phl.org

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

As a member of the Pennsylvania Unified Certification Program (PA UCP), the Department uses the certification standards of Part 26, Subpart D to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. Additionally, the Department utilizes 49 CFR Part 23, Subpart

C, to determine the eligibility of airport concessionaries to participate as Airport Concessionaire DBEs (ACDBE) in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Department will make certification decisions based on all the facts in the record as required by Parts 26 and 23.

Attachment 6 continued:

For information on applying for certification and/or the certification process, firms may contact Department at the following address or they may contact any Certifying Participant in the PA UCP by visiting www.paucp.com.

Pennsylvania Department of Transportation
Bureau of Equal Opportunity
DBE/Title VI Division
Commonwealth Keystone Building, 5th Floor
400 North Street
Harrisburg, PA 17120
717-787-5891
800-468-4201
717-772-4026 (fax)
penndotucpinfo@pa.gov

Pennsylvania Unified Certification Program – DBE Certification Application

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 - Unified Certification Program

The Department is a member of a Pennsylvania Unified Certification Program (PA UCP) and abides by the Cooperative Memorandum of Agreement, as amended, having established a Unified DBE Certification Program between and among DOT recipients in the Commonwealth of Pennsylvania. The PA UCP received its approval of the agreement from DOT on January 20, 2004. The PA UCP meets all of the requirements of Part 26, Section 26.81.

CERTIFYING PARTICIPANTS in the PA UCP are Allegheny County Department of MBE/WBE/DBE, the City of Philadelphia, the Port Authority of Allegheny County, the Southeastern Pennsylvania Transportation Authority, and the Department.

The PA UCP utilizes its Standards and Procedures Manual (Procedures Manual) to provide uniformity in the implementation of the DBE certification process. The Department amends its Procedures Manual as corrective amendments to Parts 26 and 23 are issued that impact the DBE certification standards and procedures.

The PA UCP is structured so that a DBE applicant can submit its application to any CERTIFYING PARTICIPANT. However, upon receipt by a given CERTIFYING PARTICIPANT, the application will either be handled internally or forwarded to another CERTIFYING PARTICIPANT where a backlog or geographic considerations make it more cost-efficient for another CERTIFYING PARTICIPANT to entertain the application. The CERTIFYING PARTICIPANTS make all certification decisions on

Attachment 6 Continued:

behalf of all DOT recipients in the Commonwealth. Once a DBE applicant has been certified by any of the CERTIFYING PARTICIPANTS, all other DOT recipients within the Commonwealth recognize the certification. This comports with the “one-stop shopping” component of Part 26, Section 26.81 and ensures that a prospective DBE applicant will need to apply only once for a DBE certification that will be honored by all recipients. If a CERTIFYING PARTICIPANT or other PA RECIPIENT/SIGNATORY is unwilling to abide by a decision made by a PA UCP CERTIFYING PARTICIPANT, an internal mechanism for dispute resolution is in place to address issues as they arise.

The PA UCP currently does not process applications for certification from a firm having its principal place of business outside the Commonwealth, if the firm is not currently certified by the Unified Certification Program in their home state.

The PA UCP has not formed regional reciprocity with other states at this time.

Section 26.83 - Procedures for Certification Decisions

The PAUCP reviewed the eligibility of DBEs that were certified under former Part 23 to ensure that the firm met the standards of Subparts D and E of Part 26.

DBEs that are reviewed and found to be eligible in accordance with 49 CFR Part 26 are certified until they are removed from the Program under procedures outlined under Part 26, Section 26.87.

A DBE is required to submit a *Notice of Change Affidavit* for circumstances that may affect its ability to meet size, disadvantaged status, ownership, or control criteria of Part 26 or of any material changes in the information provided with DBE’s application for certification.

A DBE is required to submit an *Annual Affidavit* affirming that there have been no changes in the firm’s circumstance affecting the ability to meet size, disadvantaged status, ownership, or control criteria of Part 26 or of any material changed in the information provided with DBE’s application for certification. Approximately one (1) month prior to the anniversary date, the DBE will be sent an *Annual Affidavit* to be completed and returned to any CERTIFYING PARTICIPANT.

A DBE may be required to provide additional information to determine continued eligibility for the Program. Additionally, the Department reserves the right to revisit or investigate a firm if there is a reason to suspect that the firm is no longer eligible to participate as a DBE.

Attachment 6 Continued:

Certification and Removal of Eligibility Procedures

Section 26.86 - Denials of Initial Requests for Certification

In the event of a denial of certification, a firm may reapply for certification six (6) months from the date the denial was issued. Firms are advised of the right to receive an informal administrative hearing/appeal before the PA UCP's Certification Appeals Committee (Committee) or to appeal a decision directly to DOT.

Attachment 9 Certification and Removal of Eligibility Procedures

Section 26.87 - Removal of Eligibility

In the event of removal of eligibility of a DBE, the procedures outlined in Part 26 are followed. The firm may reapply for certification six (6) months from the date of removal of eligibility was issued. Prior to removing eligibility, the DBE is notified of its right to an administrative due process hearing where a stenographer is present to create a verbatim transcript of the proceedings. When a DBE's eligibility is removed, the firm is advised of its right to appeal the decision to the DOT. To ensure separation of functions in a removal of eligibility proceeding, the Committee ensures that the initial decision-maker has not participated in any way in the earlier removal decision against the firm or the decision to initiate such proceeding.

Attachment 9 Certification and Removal of Eligibility Procedures

Section 26.89 - Certification Appeals to DOT

Any firm denied certification or whose eligibility has been removed may appeal to DOT. Such appeals are sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue, SE W-35
Washington, DC 20590

Certification appeal decisions affecting the eligibility of DBEs are promptly implemented as required by Part 26.

Attachment 7 – Regulations 49 CFR Part 26

Regulations: 49 CFR Part 26

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

A link to the 49 CFR Part 26 can be found on the LANTA website,

www.lantabus.com