



County of Lackawanna Transit System

DBE Program

February 28, 2012

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POLICY STATEMENT

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

It is the policy of COLTS 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 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 Executive Director has been delegated as the DBE Liaison Officer. In that capacity, the Executive Director 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 COLTS in its financial assistance agreements with the Department of Transportation.

COLTS has disseminated this policy statement to the Board of Directors 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. COLTS' policy statement will appear in local and transit-oriented publications once a year and will be included in all Requests for Proposals and Invitations for Bids.

Executive Director

Chairman of the Board of Directors

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1, 26.3 – Objectives

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

Section 26.3 – Applicability

COLTS 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

COLTS will adopt definitions contained in Section 26.5 of Part 26 for this Program. COLTS will ensure that all definitions from the regulations are included and correct. COLTS will add and include any new or amended definitions as they are provided by USDOT. COLTS will not include any definitions for terms not included in the definitions found in Section 26.5 of Part 26.

Section 26.7 – Non-discrimination Requirements

COLTS 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 in the basis of race, color, sex, or national origin.

In administering its DBE Program, COLTS 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 Payment: 26.11(a)

COLTS will report DBE participation to the relevant operating administration, which is the Federal Transit Administration, using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)

COLTS 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.

COLTS will collect this information by requesting firms quoting on subcontracts to report information directly to COLTS.

Section 26.13 – Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13(a)

COLTS shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. COLTS' 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 COLTS of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13(b)

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 – DBE Program Updates

Since COLTS has received a grant of \$250,000 or more in FTA planning capital in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. COLTS 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:

Robert Fiume
800 North South Road
Scranton, PA 18504
570-346-2061 ext. 1259
rfiume@coltsbus.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that COLTS complies with all provisions of 40 CFR part 26. The DBELO has direct, independent access to the Executive Director concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this Program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO does not have a dedicated staff 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 COLTS' progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Board of Directors on DBE matters and achievement
9. Chairs the DBE Advisory Committee
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 – DBE Financial Institutions

It is the policy of COLTS 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 financial institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. COLTS identifies these financial institutions through the Pennsylvania Uniform Certification Program website, www.paucp.com. COLTS reevaluates the availability of DBE financial institutions every 3 years.

To date no qualifying institutions have been identified.

Section 26.29 – Prompt Payment Mechanisms

Prompt Payment 26.29(a)

COLTS 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 COLTS. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of COLTS. 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 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of COLTS. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

COLTS has developed a form that is mailed to all subcontractors when payment is made to the prime contractor. This form details the period of work pertaining to the payment and the date the payment was mailed by COLTS. The form requests the subcontractor to attest to the date payment was received by them from the prime contractor.

Section 26.31 – Directory

COLTS participates in Pennsylvania’s Uniform Certification Program. The Directory is compiled by the PAUCP. Attachment B contains a link to this Directory.

Section 26.33 – Overconcentration

COLTS has not identified that an overconcentration exists in the types of work that DBEs perform. COLTS will reevaluate for overconcentration every 3 years.

Section 26.35 – Business Development Programs

COLTS has not established a business development program. We will reevaluate the need for such a program every 3 years.

Section 26.37 – Monitoring and Enforcement Mechanisms

COLTS will take the following monitoring and enforcement mechanisms to ensure compliance with 49CFR part 26.

1. COLTS 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 provided in 26.109.
2. COLTS will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provision, and contract remedies available to COLTS in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. COLTS will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by a written certification that COLTS reviewed contracting records and monitored work sites on which DBEs are performing, and will occur for each contract/project on which DBEs are participating.
4. COLTS 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

COLTS 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):

1. Removal of unnecessary and unjustified bundling of contract requirements;
2. Removal of race or gender considerations;
3. Providing a reasonable number of prime contracts available for small businesses.

All small businesses, as defined by the SBA, are encouraged to compete for prime contracts issued by COLTS. Each year, COLTS' Director of Finance & Administration will assess forthcoming projects and identify those available for small businesses. COLTS will continue to work with the Greater Scranton Chamber of Commerce to help promote these projects, and will continue to advertise all Requests for Proposals and Invitations for Bids in local newspapers, trade publications and our website. COLTS will require all bidders/offerors to fill out the Form in Attachment 4 so that COLTS may verify that the bidder/offeror qualifies as a small business.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 – Set-asides or Quotas

COLTS does not use quotas in any way in the administration of the DBE Program

Section 26.45 – Overall Goals

In accordance with Section 26.45, COLTS will submit its triennial overall DBE goal to FTA on August 2 of the year specified by FTA.

COLTS will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA.

The process generally used by COLTS to establish overall DBE goals is as follows:

Step 1: Calculate DBE availability based upon “demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate” on DOT-assisted contracts.

Step 2: Examine all relevant evidence for consideration of a possible adjustment to the base figure to reflect the “effects of the DBE Program and the level of participation that would be expected but for the effects of past and present discrimination.”

Step 3: Submit the plan to FTA within 90 days of the end of the affected fiscal year.

Before establishing the overall goal each year, COLTS will consult with Scranton Chamber of Commerce to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and COLTS’ efforts to establish a level playing field for the participation of DBEs.

Following this consultation, COLTS will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours of COLTS’ headquarters for 30 days following the date of the notice, and informing the public that COLTS and DOT will accept comments on the goals for 45 days from the date of the notice. COLTS will publish these goals in newspapers, available minority-focused media, trade publications and our website. COLTS strives to publish this notice by June 1st and will ensure that it contains COLTS’ address and our website as these are the outlets whereby the proposal may be reviewed and comments accepted.

COLTS’ overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication and the goal in media outlets listed above.

COLTS will begin using its overall goal on October 1st of the specified year, unless we have received other instructions from DOT. If COLTS 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. COLTS’ goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 – Goal Setting and Accountability

If the awards and commitments shown of COLTS' 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, COLTS 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

Section 26.49 – Transit Vehicle Manufacturers Goals

COLTS 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, COLTS, may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51 – Meeting Overall Goals/Contract Goals

COLTS will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, COLTS will:

COLTS will use contract goals to meet any portion of the overall goal COLTS does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goals applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

COLTS will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 – Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, COLTS will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) document it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

The Director of Finance and Administration 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 responsive.

The process used to determine whether good faith efforts have been made by a bidder are as follows:

1. Inclusion of Form 1 found in Attachment 5
2. Verification on PA UCP website of the availability of certified DBEs

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

Information to be Submitted: 26.53(b)

COLTS treats bidders'/offerors' compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and address 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 participation 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 3 days of being informed by COLTS that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Robert Fiume, 800 North South Road, Scranton, PA 18504, 570-346-2061 x 1259, rfiume@coltsbus.com. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with COLTS' reconsideration official to discuss the issue of whether it net the goal or made adequate good faith efforts to do so. COLTS will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror 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 Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

COLTS requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without COLTS' prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to COLTS its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to COLTS prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise COLTS of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, COLTS will require the prime 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. COLTS will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, COLTS will require the prime contractor to obtain COLTS' prior approval of the substitute DBE and to provide copies of new or amended subcontract, or documentation of good faith efforts.

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

Sample Bid Specification

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the County of the Lackawanna Transit System 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 ___ % has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 40 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

participation in the contract as provide 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

COLTS 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

COLTS is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Pennsylvania. The UCP will meet all of the requirements of this section. COLTS will use and count from DBE credit only those DBE firms certified by the Pennsylvania Unified Certification Program.

Any interested party is invited to go to the PAUCP website, www.paucp.com.

Section 26.83-26.91 – Procedures for Certification Decisions

Any firm or complainant may appeal the PAUCP's 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

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 – Information, Confidentiality, Cooperation

COLTS will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

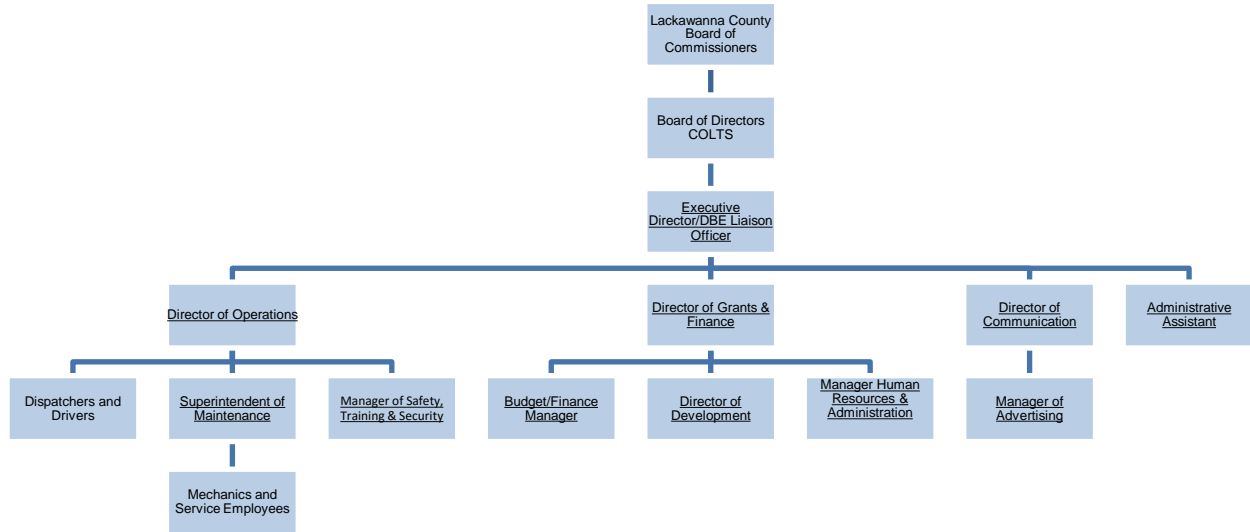
Notwithstanding any contrary provisions of state or local law, COLTS will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

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

ATTACHMENT 1: ORGANIZATIONAL CHART



ATTACHMENT 2: DBE DIRECTORY

Please visit Pennsylvania's Unified Certification Program's website at www.paucp.com for a complete listing of certified DBEs in Pennsylvania.

ATTACHMENT 3: MONITORING AND ENFORCEMENT MECHANISMS/LEGAL REMEMDIES

COLTS has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the breach of contract action, pursuant to the terms of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE Program, 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: SMALL BUSINESS PARTICIPATION FORM

To be filled out by COLTS:

RFP/IFB: _____

Date Advertised: _____

NAICS Code: _____

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Average number of employees over the past 12 months: _____

Average annual receipts over the past 3 years: _____

Type of entity (i.e. sole proprietor): _____

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 response):

_____ 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 Form 2 as documentation demonstrating good faith efforts.

_____ The bidder/offeror was unable to meet the DBE goal of _____% and submits a printout of certified DBEs from the PA UCP website for the following NAICS _____ as documentation demonstrating good faith efforts.

Name of Bidder/Offeror's Firm: _____

Authorized Official

Date

Form 2: Letter of Intent

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip Code: _____

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 representation in this Letter of Intent and Affirmation shall be null and void.

ATTACHMENT 6: CERTIFICATION FORMS

The following pages are copies of COLTS' Board Resolution to participate in Pennsylvania's Uniform Certification Program.

ATTACHMENT 7: REGULATIONS 49 CFR PART 26

The following pages are a copy of regulation 49 CFR Part 26.