

EMTA DBE PROGRAM POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

The Erie Metropolitan Transit Authority (EMTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The EMTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the EMTA has signed an assurance that it will comply with 49 CFR Part 26. The EMTA is a Tier 1 recipient receiving over \$670,000 of federal transit support. As such, EMTA incorporates program changes reflected in the annual DOT Contractors Manual. For a detailed description of FTA requirements, see [www. https://www.ecfr.gov/current/title-49/subtitle-A/part-26](http://www.ecfr.gov/current/title-49/subtitle-A/part-26).

It is the policy of the EMTA to ensure that DBEs as defined in CFR Title 49 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.

David Robinson has been delegated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the in its financial assistance agreements with the Department of Transportation. The Erie Metropolitan Transit Authority has disseminated this policy statement to its 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. This distribution was accomplished by including it in the Procurement Handbook, Part III, which is distributed with any bid packets.



Jeremy Peterson
Chief Executive Officer

5/29/25
Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Erie Metropolitan Transit Authority is the recipient of federal transit funds authorized by Titles I, 111, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, 11, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The Erie Metropolitan Transit Authority will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The Erie Metropolitan Transit Authority will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation on the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to 49 CFR part 26 at the intervals stated on the form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The Erie Metropolitan Transit Authority 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 or non- DBE status, age of firm, and annual gross receipts of the firm.

We will collect this information from anyone who requests to be a vendor for a competitive bid and they will be placed on the list with their pertinent information.

Section 26.13 Federal Financial Assistance Agreement

The Erie Metropolitan Transit Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The Erie Metropolitan Transit Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

Contract Assurance: 26.13b

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

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

SUBPART B -ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the Erie Metropolitan Transit Authority has received a grant 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 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

David Robinson, 127 East 14th Street, Erie, PA 16503, (814) 459-4287, drobinson@ride-the-e.com.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Erie Metropolitan Transit Authority complies with all provision of 49 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 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO works in conjunction with the Grants Manager in carrying out the duties and responsibilities which includes 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.
6. Analyzes the Erie Metropolitan Transit Authority's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.

9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Acts as liaison to the Uniform Certification Process in Pennsylvania.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains the Erie Metropolitan Transit Authority's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the Erie Metropolitan Transit Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. There are no such financial institutions that we have identified in our local geographical area. The availability of such financial institutions will be evaluated every two years during the DBE goal setting process.

Section 26.29 Prompt Payment Mechanisms

The Erie Metropolitan Transit Authority will include the following clause in each DOT- assisted prime contract:

The Contractor shall pay subcontractors for satisfactory performance of their obligations under the Contract no later than 30 days from the date of receipt by the Contractor of each and every payment from EMTA. The Contractor shall return retainage to subcontractors within 30 days after the subcontractor's Contract work is satisfactorily completed. A delay in prompt payment to subcontractors may take place only for good cause, following EMTA's written approval. At EMTA's sole discretion, payment to the Contractor for work performed by subcontractors may be withheld until the Contractor demonstrates to EMTA's satisfaction that subcontractors shall be promptly paid for work performed under the Contract. This clause applies to both DBE and non-DBE subcontracts

Section 26.29 (d) Monitoring and Enforcement

The EMTA has established a prompt payment requirement listed in the Procurement Handbook to monitor and enforce that prompt payment and return of retain age is in fact occurring. Below is the requirement.

Prompt Payment Requirement. The Contractor shall pay subcontractors for satisfactory performance of their obligations under the Contract no later than 30 days from the date of receipt by the Contractor of each and every payment from EMTA. The Contractor

shall return retainage to subcontractors within 30 days after the subcontractor's Contract work is satisfactorily completed. A delay in prompt payment to subcontractors may take place only for good cause, following EMTA's written approval. At EMTA's sole discretion, payment to the Contractor for work performed by subcontractors may be withheld until the Contractor demonstrates to EMTA's satisfaction that subcontractors shall be promptly paid for work performed under the Contract.

Contractors are also required to complete a monthly DBE Status Statement and provide proof that payment was made to the DBE.

Section 26.31 Directory

The Erie Metropolitan Transit Authority utilizes the directory provided by the Pennsylvania Unified Certification Program 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. The Directory may be found at its website, www.paucp.com.

Section 26.33 Overconcentration

The Erie Metropolitan Transit Authority has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Erie Metropolitan Transit Authority has not established a business development program. We will reevaluate the need for such a program every two years.

Section 26.37 Monitoring and Enforcement Mechanisms

The Erie Metropolitan Transit Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by using certified payroll records and also site visits that can assure that the work being performed by DBE prime contractor(s) and/or subcontractor(s) is in accordance for the signed contracts.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

The EMTA has incorporated the following non-discriminatory element to its DBE Program; in order to facilitate competition on DOT assisted projects by both DBE and non-DBE small businesses. These elements include but are not limited to:

Removal of unnecessary and unjustified bundling of contract requirements; Race-neutral small business set aside for prime contracts below a certain value. This will be proposed per fiscal year basis after analyzing our current small business participation. The DBELO, the Grants and Planning Manager, and the Purchasing Agent will participate in assessing year contracts and determining the reasonable number of prime contracts available for small business. All contracts will be made at the discretion of the Executive Director or the Board of Directors as determined by the Authority's Procurement Procedures.

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.

The EMTA will utilize as a resource the Gannon University Small Business Development Center, which is one of 16 Small Business Development Centers in Pennsylvania.

We will verify business size by using the standards published in the U.S. Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System Codes (Source http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf) to determine a firm's SBA eligibility.

This provision will be fully implemented January 1, 2013.

SUBPART C- GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Erie Metropolitan Transit Authority does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45, EMTA will submit its triennial overall DBE goal to the DOT on August 1 of the year specified by FTA.

The process used to establish overall DBE goals for EMTA is as follows:

Before establishing the overall goal, the Erie Metropolitan Transit Authority will solicit input at a minimum from the County of Erie, City of Erie, and the SBA to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Erie Metropolitan Transit Authority's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be published in the Erie Times News, which is the newspaper of general circulation throughout Erie County and will include addresses to which comments may be sent and where the proposal may be reviewed.

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

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Our 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 of the goal in media outlets listed above.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on EMTA's 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. Perform the analysis, establish and implement a corrective action plan, and maintain information/records regarding the analysis and efforts made.

Section 26.49 Transit Vehicle Manufacturers Goals

The Erie Metropolitan Transit Authority 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, the Erie Metropolitan Transit Authority 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.SI(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The Erie Metropolitan Transit Authority will meet the maximum feasible portion of its overall goal by using race neutral means of facilitating DBE participation.

Section 26.SI(d-g) Contract Goals

The Erie Metropolitan Transit Authority will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, EMTA will evaluate certified DBE's annually to see if any DBEs can be used for non- contract purposes.

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

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

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

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel 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 responsive bidder: David Robinson - DBE Liaison Officer.

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

Information to be submitted (26.53(b))

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

Administrative reconsideration (26.53(d))

Within 7 days of being informed by the Erie Metropolitan Transit Authority 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: Jeremy Peterson, 127 East 14th Street, Erie, PA (814) 459-4287, jpeterson@ride-the-e.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 our reconsideration official to discuss the issue of

whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

The Erie Metropolitan Transit Authority will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior written consent of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Part IV, Section 2.2.2.1 of the Erie Metropolitan Transit Authority's Procurement Handbook states as follows:

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 C.F.R. 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 the Contract, which may result in the termination of the Contract or such other remedy as EMTA deems appropriate. The Contractor shall ensure that these requirements are included in each subcontract related to the Contract.

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

Sample Bid Specification:

Section IV of the EMTA's Procurement Procedures is included in all procurements. The DBE Assurance Form is included to be completed in all procurements over \$2,500. The following is language included only when a contract goal has been set.

EMTA has established a DBE program in accordance with regulations of the U.S. Department of Transportation (DOT) 49 CFR Part 26. It is the policy of the EMTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in contracting and procurement activities of the EMTA, including

all DOT-assisted contracts. DBE requirements are included in the EMTA's Procurement Procedures. The EMTA has a stated goal of __ % DBE subcontract participation.

Additional information on the EMTA's DBE Program can be obtained by contacting:

David Robinson, DBE Liaison Officer Erie Metropolitan
Transit Authority 127 East 14th Street
Erie, PA 16503
Telephone: (814) 459-4287
FAX: (814) 455-0071
E-mail: drobinson@ride-the-e.com

Section 26.55 Counting DBE Participation

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

SUBPART D - CERTIFICATION STANDARDS

Section 26.61- 26.73 Certification Process

The Erie Metropolitan Transit Authority participates in the Pennsylvania Unified Certification Program, which uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts.

For information about the certification process and where to apply, firms should contact:

David Robinson, 127 East 14th Street, (814) 459-4287, drobinson@ride-the-e.com.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Erie Metropolitan Transit Authority is a member of the Pennsylvania Unified Certification Program (UCP). The UCP will meet all of the requirements of this section. The following is a description of the UCP:

The PA UCP provides "one stop shopping" for minority and women businesses seeking certification as a Disadvantaged Business Enterprise. The PA UCP makes all certification decisions on behalf of all agencies and organizations in the Commonwealth with respect to participation in the Disadvantaged Business Enterprise Program. Firms certified with the PA UCP are eligible to participate on

any Federal Aviation Administration, Federal Highway Administration and the Federal Transit Administration funded contract as a DBE.

Section 26.83-26.91 Procedures for Certification Decisions

Erie Metropolitan Transit Authority 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. A copy of PA UCP's certification procedures available at: www.paucp.com

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

P.A. Department of Transportation (PENNDOT)
P.O. Box 3251
Harrisburg, PA 17105-3251
717-787-5891
penndotucpinfo@pa.gov

Any firm or complainant may appeal a PA UCP's decision in 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 DBE's for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

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

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

Attachment 1

