

# Opening Doors to Opportunity

The Greater Cleveland Regional Transit Authority creates a successful disadvantaged business enterprise program

BY CARL KIRKLAND AND KAY SUTULA



**T**here are many alarming stories about prime contractors failing to pay, or underpaying, disadvantaged business enterprise firms (DBEs), or of prime contractors failing to perform or to submit proper documentation. The Office of Business Development at the Greater Cleveland Regional Transit Authority (GCRTA) wanted to take a different approach to increase the number of qualified DBEs it works with, expand their areas of expertise, and help them be successful subcontractors.

To do this, the Office of Business Development (OBD) focuses on five areas of concentration:

1. Certification, eligibility, and compliance
2. Contract compliance and monitoring
3. Goal setting
4. Outreach
5. Small business participation plan

### CERTIFICATION, ELIGIBILITY, AND COMPLIANCE

Once a DBE firm completes the Ohio Department of Transportation Uniform Certification Application submission form and the DBE eligibility has been reviewed, the OBD receives the information and plans an onsite visit with the owners of the firm. They conduct a desk audit, which includes a review of products, equipment, and any machinery.

The OBD also performs onsite visits with its current DBEs, building a good relationship with the firms and checking to see if they have expanded their expertise. While most of the application process is handled within the Department of Transportation, OBD staff conducts other DBE firms to provide

support—this includes education about the entire program, including ownership, eligibility, and the authority's process, which includes contract opportunities, procurement, and engineering processes.

### CONTRACT COMPLIANCE AND MONITORING

Once a DBE is selected for a procurement, OBD works closely with documentation and with the Greater Cleveland Regional Transit Authority project manager to monitor the prime contractor's compliance. OBD staff will travel unannounced to a job site—at least twice a week—to count the number of workers on the job site and compare their count to the project schedule log, ask workers for a paystub or proof of income, and ask the foreman for information about workforce utilization. OBD staff will review the prevailing wage received by workers against the Department of Labor's wage schedule. If there are any discrepancies, the authority will report this to its project manager, and payments to the prime contract will be stopped until the workers receive the required backpay. This work is handled by a staff of four, including the director, so weekly meetings on the progress of each project are vital.

These measures are necessary for various reasons. For example, prime contractors have at times paid workers the wage required where they live rather than the prevailing rates of that region, as required by the GCRTA. The authority's OBD staff need to ensure that the DBE is receiving the correct payments and, if not, hold the prime contractors accountable. Once the prime contractor has verified this by submitting certified payroll reports, invoices, and compliance reports, and DBE payments are confirmed, the project can then continue.

### GOAL SETTING AND CHANGING THE CULTURE

Procurements of \$25,000 and above are reviewed for a DBE participation goal, which encompasses all certified DBEs that are ready, willing, and able to perform. The prime contractors receive the DBE goal with the project information, which is sent in a mass email to all available DBEs. Once a pre-bid conference is held virtually, with all prime contractors and DBEs present, procurement and the project manager review the project. At that point the OBD asks the DBEs to address the audience and explain how they

### ? WHAT IS A DBE?

The Federal government defines a DBE as a small business that must be at least 51 percent owned and controlled by one or more "socially and economically disadvantaged" individuals. The management and daily operations of the business must also be conducted by such individuals. Federal regulations presume that the following groups are "socially and economically disadvantaged": African Americans, Hispanic Americans, Portuguese Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women, and any other individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA).

Source: Greater Cleveland RTA<sup>1</sup>

can perform the tasks the contract requires, encouraging and helping the prime contractors identify DBEs that are available to participate. The OBD also tracks which DBEs attend and participate in these virtual pre-bid meetings.

When submitting its proposal, the prime contractor identifies which DBEs will be part of the project. The DBE is required to submit an affidavit along with the project proposal, as a letter of intent ensuring that the DBE percentage goal will be met with a good faith effort. If a prime contractor can't find a DBE, it can contact OBD staff, who will help identify subcontractors.

If a prime contractor is selected with no DBEs identified in the proposal, OBD will send a certified letter regarding their non-compliance. At that point, the prime contractor has three business days to comply with the DBE goal and identify certified DBEs to work on the project. If the OBD receives a response, it issues a letter of intent and must receive the DBE affidavit within the specified timeframe. If the prime contractor does not adhere to the timeframe, it is ruled out for the project because of non-compliance, and the next contractor in line will be selected for the project.

When a project gets underway, the project manager, OBD staff, other applicable staff from GCRTA, the prime contractor, and subcontractors (DBEs) hold monthly project meetings where issues and concerns are addressed, bottlenecks are identified, and, if a project is off schedule, a plan is put in place to get it back on track. If a prime contractor isn't paying the DBEs, payment to the prime contractor can be withheld until the problem is resolved. If the prime contractor remains non-compliant, the authority's project manager can shut the project down completely. ■

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The Greater Cleveland Regional Transit Authority's Disadvantaged Business Enterprise (DBE) program is designed to help ensure that DBE firms have a level playing field and equal opportunities to receive and participate in federally assisted contract opportunities.

### AN OVERVIEW

The Greater Cleveland Regional Transit Authority (GCRTA) Office of Business Development (OBD), which runs the program, promotes, and encourages the inclusion of small, women, and minority owned businesses in RTA contracts. OBD's primary mission is to engage, support, and assist the local small and disadvantaged business community, and to help ensure that DBEs have fair and representative participation in procurement opportunities at RTA and within the community-at-large.

RTA uses contract-specific DBE goals to meet the portion of its overall DBE goal that isn't projected to be met using race-neutral means, and it can only establish goals on contracts that have subcontracting opportunities. A DBE goal doesn't have to be established for every contract, and goals are adapted to reflect the circumstances of each contract (such as, type and location of work, availability of DBEs to perform the work, and projected subcontract dollar amount or percentage of work available to DBEs).

### PROGRAM ELIGIBILITY

The DBE Program was established for companies owned and controlled by people who are considered socially and economically disadvantaged under federal regulation 49 CFR Part 26: women; Black, Hispanic, Asian-Pacific, Subcontinent Asian-Pacific, and Native Americans.<sup>2</sup> A company that is, among other things, 51 percent or more owned (individually or in any combination) by individuals from these groups may be eligible for certification as a DBE.

Businesses owned by people who aren't members of one of these groups may also be eligible, provided they can establish their "social" and "economic" disadvantage. This is determined on a case-by-case basis.