



## Disadvantaged Business Enterprise Program 2017 to 2019



## POLICY STATEMENT

The Transit Authority of the Lexington Fayette Urban County Government (Lextran) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR part 26. Lextran has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Lextran has signed an assurance that it will comply with 49 CFR part 26.

It is the policy of Lextran to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. Lextran shall support the following objectives set forth by 49 CFR part 26.1, to ensure:

1. Nondiscrimination in the award and administration of DOT-assisted contracts;
2. A level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. The DBE Program is narrowly tailored in accordance with applicable law;
4. Only firms that fully meet eligibility standards are permitted to participate as DBEs;
5. Barriers to the participation of DBEs in DOT-assisted contracts are removed;
6. The development of firms that can compete successfully in the market place outside the DBE Program.

Lextran has disseminated this policy statement to all of the components of our organization. This statement will be distributed to DBE and non-DBE business communities that perform work on DOT assisted contracts through procurement requests, through online communication, and through facsimile. Lextran will publish procurement opportunities through newspapers and trade journals. When requested, Lextran will support a level playing field by offering DBEs and SBEs assistance in navigating the technical requirements of responding to procurement opportunities.

The Planning and Technology Manager has been designated as the DBE Liaison Officer. In that capacity, the Planning and Technology Manager 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 Lextran in its financial assistance agreements with the United States Department of Transportation.

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Carrie Butler – General Manager

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Date

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## **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**

Lextran 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, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **Section 26.5 Definitions**

Lextran will adopt the definitions contained in Section 26.5 for this program.

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

Lextran 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, Lextran 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**

In fulfilling §26.11, Lextran will continue to provide data about the DBE program to the Federal Transit Administration. Lextran will report DBE participation on a semi-annual basis, using the Transit Award Management System (TrAMS). These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Lextran 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 bidder list approach to calculating overall goals. The bidder list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

Lextran works with USA Buyers, a company that offers a platform for potential bidders to view and respond to procurement opportunities. USA Buyers provides a means to solicit business through NAICS code-based invitations. Procurement opportunities include a contract clause that requires prime bidders to report the names, addresses, and other relevant firm information of all potential sub-contracting firms.

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

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

Assurance 26.13(a):

As a recipient of DOT funds, Lextran has agreed with and signed the following assurance:

*The Transit Authority of the Lexington-Fayette Urban County Government 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 Transit Authority of the Lexington Fayette Urban County Government of its failure to carry out its approved program, the Department may impose sanction 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.).*

Contract Assurance 26.13(b):

Lextran ensures that the following clause will continue to be 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**

Lextran has received FTA grant funding beyond \$250,000 in a federal fiscal year and therefore is required to maintain a DBE program. Lextran will continue to carry out this program until all funds from DOT financial assistance have been expended. The DOT will be updated when any significant changes to the DBE program are made.

### **Section 26.23 Policy Statement**

The Policy Statement can be found 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:

Fred Combs  
Planning and Technology Manager  
200 West Loudon Avenue  
Lexington, KY 40508  
(859) 255-7756  
[fcombs@lextran.com](mailto:fcombs@lextran.com)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring Lextran complies with all provision of 49 CFR part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters.

The DBELO—in conjunction with the Director of Procurement and the Director of Finance—is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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. Analyzes Lextran's progress toward attainment and identifies ways to improve progress;
6. Participates in pre-bid meetings;
7. Advises the General Manager and Lextran's Board of Directors on DBE matters and achievement;
8. Provides DBEs with information and assistance in preparing bids;
9. Plans and participates in DBE training seminars; and,
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

## **Section 26.27 DBE Financial Institutions**

Lextran will 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. Such institutions will be identified through the Kentucky Transportation Cabinet's directory of certified DBE.

## **Section 26.29 Prompt Payment Mechanisms**

Lextran 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 thirty (30) days from the receipt of each payment the prime contract receives from Lextran. The prime contractor agrees further 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 the Lextran. This clause applies to both DBE and non-DBE subcontracts.*

### **Section 26.31 Directory**

Lextran maintains a directory identifying all firms eligible to participate as DBEs as compiled by the Kentucky Transportation Cabinet. 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.

### **Section 26.33 Overconcentration**

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

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

Lextran has not established a business development program.

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

Lextran 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 DOT 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. Attachment C of 49 CFR part 26 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
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, which will be accomplished by looking at invoices and work performance documents.
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**

Lextran will take reasonable steps to eliminate obstacles to the participation of Small Business Enterprises (SBE), including unnecessary and unjustified bundling of contract requirements that might preclude small business participation in procurements as prime contractors or subcontractors.



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

### Section 26.43 Set-asides or Quotas

Lextran does not and will not use quotas in the administration of this DBE program. Lextran will not set-aside contracts for DBEs except in limited and extreme circumstances when no other method could be reasonably expected to redress egregious instances of discrimination.

### Section 26.45 Setting Overall Goals

Lextran’s DBE goal for FY17, FY18, and FY19 is 2 percent of the federal financial assistance Lextran will award, excluding FTA funds used for the purchase of transit vehicles. Lextran anticipates awarding federally funded projects in the amount of \$14,007,750. Based on that projection, Lextran anticipates spending about \$280,155 with DBEs during the three fiscal years. The methodology to calculate the DBE goal was as follows:

#### Step 1: Relative Availability of DBEs in Kentucky

Lextran’s DBE goal was built upon the number of ready, willing, and able DBEs relative to the number of all businesses that are ready, willing, and able to participate in procurements. The Kentucky Transportation Cabinet maintains a directory of certified DBEs ready, willing, and able to provide their services to Kentucky agencies. There were 385 certified DBEs found on the Kentucky Transportation Cabinet’s directory. According to the US Census Bureau’s County Business Patterns database, there were 91,418 total firms in Kentucky. The base figure was calculated as:

$$\frac{\text{Number of Certified DBEs in KYTC Directory}}{\text{Number of firms in Kentucky}} = \frac{385}{91,418} = 0.42\%$$

#### Step 2: Base Figure Adjustment

For federal fiscal years (FFY) 2013-2015, Lextran awarded about 0.16 percent of their federally awarded dollars to certified DBE firms. In 2014 alone, Lextran awarded about 0.48 percent of their federal dollars to DBE firms. The first half of FFY 2016, from October 2015 to March 2016, was included in the summary chart to reflect the DBE participation on Lextran’s new headquarters.

<b>Lextran Disadvantaged Business Enterprise Program Summary FFY 2013-2015</b>						
<b>Federal Fiscal Year</b>	<b>Number of Awards</b>	<b>Federal Dollars Awarded</b>	<b>Number of DBE Awards</b>	<b>Dollars Awarded to DBE Firms</b>	<b>Percent of Dollars Awarded to DBE Firms</b>	
FFY 2013	2,346	\$ 3,884,489	0	\$ -	0.00%	
FFY 2014	2,712	\$ 5,524,175	16	\$ 26,714.00	0.48%	
FFY 2015	2,209	\$ 6,947,626	0	\$ -	0.00%	
FFY 2016*	1,250	\$ 6,960,345	30	\$ 620,599.90	8.92%	
<b>Total</b>	<b>8,517</b>	<b>\$ 23,316,635</b>	<b>46</b>	<b>\$ 647,313.90</b>	<b>2.78%</b>	

\*Includes the first half of FFY 2016: from October 1 to March 30.

In total, from FFY 2013 through the first half of FFY 2016, Lextran awarded \$647,313.90 to DBE firms, about 2.78 percent of all federal dollars awarded during that time. Averaging the yearly award to DBE firms, or using the median yearly award for FFY 2013-2015 would yield an adjustment value near zero because of low DBE participation. Lextran’s DBE goal for FFY 2017-2020 was adjusted based on 2.78 percent, which represents the percent of federal dollars awarded to DBE firms during the most recent 40 months.

$$\frac{\text{Base figure of relatively available DBEs} + \text{Prior DBE Participation}}{2}$$

$$\frac{0.42\% + 2.78\%}{2} = \frac{3.20\%}{2} = 1.60\%$$

The overall DBE goal for Lextran for FFY 2017-2020 will be 2 percent. Rounding the calculated overall goal of 1.6 percent up to 2 percent establishes a reasonable goal considering Lextran’s market area and continued focus on DBE outreach and training. However, the 2 percent goal also reflects the difficulty in soliciting DBE firms without a large-scale construction project, such as the recently completed administrative headquarters.

**Outreach and Public Participation**

In aiming toward and beyond our 2 percent goal, Lextran commits to creating and executing an outreach and public participation campaign that casts a wide net to encourage DBE participation. Lextran proposes the following outreach and public participation policies to support the DBE program:

- Lextran will invite DBE firms and other related parties as needed to meetings to discuss upcoming procurement opportunities.
- Lextran will participate in local and regional DBE events, such as the Lexington Bluegrass Area Minority Business Expo.
- Lextran will provide training and technical assistance to any firm, DBE included, in navigating the procurement bid and selection process.

### **Section 26.47 Failing to Meet Goals**

Lextran fell short of the 7 percent goal established for FFYs 2014, and 2015. Lextran awarded 8.92 percent of federal funds to DBE firms through the first half of FFY 2016 and is on track to surpass the 7 percent goal. DBE participation for FFY 2016 has come from the construction of Lextran's new administrative headquarters. Without a construction project of similar magnitude on Lextran's radar for the next three years, repeating a similar volume of DBE awards as in the first half of FFY 2016 is not likely to continue in the future. Lextran remains committed to the DBE program, to making a good-faith effort at reaching the 2 percent goal for the upcoming three FFYs, and to implementing outreach and public involvement processes to encourage DBE participation.

### **Section 26.49 Transit Vehicle Manufacturers Goals**

Lextran will require each transit vehicle manufacturer to certify that it has complied with the requirements of §26.49, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements. Alternatively, Lextran may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program.

### **Section 26.51 Race-Neutral & Race-Conscious Participation and Contract Goals**

All of the previously awarded dollars to DBE firms were conducted through race-neutral procurements. Lextran anticipates the following procurement opportunities will be funded wholly or partially with federal funds:

- Janitorial Supplies (current contractor expires May 2017)
- Landscaping Services (current contract expires December 2016)
- HVAC (current contract expires October 2016)
- Paratransit Services (current contract expires June 2017)

Other procurement opportunities exist but are not likely to be funded through federal dollars. Lextran always encourages DBE participation regardless of funding source, however, only federally funded projects count toward the DBE goal.

Lextran will meet the maximum feasible portion of the overall goal through facilitating race-neutral DBE participation. Because there are no planned large-scale construction projects on the horizon for Lextran, race-neutral strategies will be tapped for the entirety of the 2 percent goal. Lextran does not anticipate using DBE specific contract goals over the next three FFYs.

### **Section 26.53 Good Faith Efforts Procedures under Contract Goals**

While Lextran does not anticipate using contract goals, the following procedures are in place in the event that contract goals become necessary. For procurements that include contract goals, the obligation of the bidder/offeror is to make a good faith effort under the elements listed in §26.53. The bidder/offeror shall

provide evidence that the DBE contract goal will be met, or documentation following Appendix A to part 26 to show that a good faith effort for DBE participation was made yet the goal was not reached.

Lextran's solicitations for DOT-assisted contracts for which a contract goal has been established will follow the requirements of §26.53(b-j).

#### §26.53(b): Required Information

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.

#### §26.53(d) Administrative Reconsideration

A bidder/offeror may request administrative reconsideration within 30 days of being informed by Lextran that it has failed to meet requirements set forth by this section. Bidder/offerors should make this request in writing to the following reconsideration official:

Keith Srutowski  
Director of Procurement  
200 Loudon Avenue  
Lexington, KY 40508  
(859) 255-7756  
[ksrutowski@lextran.com](mailto:ksrutowski@lextran.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. Lextran 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.

#### §26.53(f): Replacing DBEs on a Contract

Lextran 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 approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, 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

*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 Lextran 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 \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.*

*The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.*

### **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 and E - CERTIFICATION STANDARDS AND PROCEDURES**

### **Section 26.61 - 26.73 Certification Process**

Lextran has not and will not determine the eligibility of firms to participate as DBEs. To be certified as a DBE, a firm must meet all certification eligibility standards through a process conducted by the Kentucky Transportation Cabinet. For information about the certification process or to apply for certification, firms should contact the Kentucky Transportation Cabinet Office for Civil Rights and Small Business Development.

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

Lextran is the member of a Unified Certification Program led by the Kentucky Transportation Cabinet.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

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

Lextran will safeguard information that might reasonably be regarded as confidential business information from disclosure to third parties, consistent with federal, state, and local law. Notwithstanding any contrary provisions of federal, state or local law, Lextran will not release personal financial information submitted in response 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 Transit Authority of the Lexington Fayette Urban County Government or DOT.

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 stated in the schedule of DBE participation.