



**COLUMBUS**  
REGIONAL AIRPORT AUTHORITY

## Disadvantaged Business Enterprise Program Plan

Enabling Legislation: 49 CFR Part 26



Revised October 2011

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## Policy Statement

The Columbus Regional Airport Authority ("Authority") 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 Authority is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The Authority has signed airport grant assurances that it will comply with 49 CFR Part 26.

The Authority has maintained and is committed to a program that promotes the maximum opportunity for participation of Disadvantaged Business Enterprises (DBEs) in construction-related contracting opportunities with the Authority. The Authority recognizes the importance of diversity and inclusion as a business imperative for success and understands that to achieve and live our core values, diversity and inclusion must be an integral part of our culture and central to the way we do business.

To that end, it is the policy of the Authority to:

1. Ensure nondiscrimination in the Authority's award and administration of opportunities at the Airport;
2. Create a level playing field on which DBEs can compete fairly for contracting opportunities at the Airport;
3. Ensure that the DBE program is narrowly tailored in accordance with Regulations and other applicable law;
4. Ensure that only firms that fully meet the eligibility standards of Part 26 are permitted to participate as DBEs at the Airport;
5. Remove barriers to the participation of DBEs in opportunities at the Airport; and
6. Provide appropriate flexibility to the Authority in establishing and providing opportunities for DBEs.

Ms. Damita R. Brown, Business Diversity Manager has been designated as the DBE Liaison Officer (DBELO). In that capacity, Ms. Brown 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 Authority in its financial assistance agreements with the Department of Transportation.

This policy will be circulated to the Columbus Regional Airport Authority Board of Directors, all relevant Authority personnel and to members of the business community that perform or are interested in performing work on the Authority's related contracts. The complete DBE Program and the overall DBE goal analysis are available for review at the office of the Authority's Business Diversity Manager at 4600 International Gateway Columbus, OH 43219.

This policy will be submitted to the Federal Aviation Administration for approval pursuant to the Regulations. This policy will be modified by the Authority to the extent required to obtain such approval. If there are any questions or a need for further information regarding this Program, please contact the Business Diversity Manager, Damita Brown, by telephone at (614) 239-5049, by fax at (614) 239-4066, or by e-mail at [dbrown@columbusairports.com](mailto:dbrown@columbusairports.com)



Elaine Roberts, A.A.E. President & CEO

01/30/2012

Date

## Subpart A – General Requirements

### I. Objectives (49 CFR §26.1)

The objectives of the Authority's DBE program are to:

- 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; and
- 6) To assist the development of firms that can compete successfully in the market place outside the DBE Program.

### II. Applicability (49 CFR § 26.3)

The Authority is a recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

### III. Definitions (49 CFR § 26.5)

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

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

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

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

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

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

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

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

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

**Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**DOT/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

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

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

**Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

**Joint venture** means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the

contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

**Noncompliance** means that a recipient has not correctly implemented the requirements of this part.

**Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

**Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

**Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

**Primary recipient** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

**Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

**Race-conscious** measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral** measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

**Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

**Secretary** means the Secretary of Transportation or his/her designee.

**Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**Small Business Administration** or **SBA** means the United States Small Business Administration.

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

**Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

**Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

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

#### **IV. Nondiscrimination (49 CFR §26.7)**



The 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 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

#### **V. Recordkeeping Requirements (49 CFR §26.11)**

We will report DBE participation to DOT as follows:

We will submit annual DOT Form 4630, as modified for use by FAA recipients.

##### Bidders List §26.11 (c)

The 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 non-DBE status, age, and annual gross receipts of firms.

The Authority will collect this information by requiring all bidders, as part of demonstrating responsiveness regarding their bids/proposals, to:

- 1) Provide company information on their bid form including company name, address, DBE/non-DBE status, company age and company annual gross receipts.
- 2) Provide information regarding all subcontractors that provided a quote as part of the bidder's bid. This information shall include each quoting subcontractor's name, address, DBE/non-DBE status, company age and company annual gross receipts.

#### **VI. Federal Financial Assistance Agreement Assurance (49 CFR §26.13)**

The Authority has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The Columbus Regional Airport 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 Columbus Regional Airport Authority shall take all the necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Columbus Regional Airport Authority'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 Columbus Regional Airport Authority 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.).

##### Contract Assurance §26.13b

The Authority will ensure that the following clause is placed in every DOT-assisted contract and

subcontract:

The contractor 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**

### **I. DBE Program Updates (49 CFR §26.21)**

Since the Authority has received \$250,000 or more in grant funds for airport planning or development, 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.

### **II. Policy Statement (49 CFR §26.1, 26.23)**

The policy statement is elaborated on the first page of this program.

### **III. DBE Liaison Officer (DBELO) (49 CFR §26.25)**

The Authority has designated the following individual as our DBE Liaison Officer:

Damita R. Brown, Manager, Business Diversity  
4600 International Gateway  
Columbus, OH 43219  
Phone: 614-239-5049  
Fax: 614-239-4066  
E-mail : [dbrown@columbusairports.com](mailto:dbrown@columbusairports.com)

In that capacity, Ms. Brown is responsible for implementing all aspects of the DBE program and ensuring that the Columbus Regional Airport Authority complies with all provisions of 49 CFR Part 26. Damita Brown has direct, independent access to the President/CEO concerning DBE program matters. The DBE Liaison Officer shall carry out the administration of the DBE Program with the assistance of CRAA staff and paid consultants assisting with DBE implementation efforts. An organizational chart displaying Manager, Business Diversity position in the organization is found in Attachment A to this program.

The Business Diversity Manager is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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 relevant 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) and monitors results.
- 6) Analyzes CRAA's progress toward goal attainment and identifies ways to improve progress.
- 7) Participates in pre-bid meetings.

- 8) Advises the President/CEO on DBE matters and achievement.
- 9) Participates with legal counsel and project coordinators to determine contractor compliance with good faith efforts.
- 10) Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- 11) Plans and participates in DBE training seminars.
- 12) Serves as a liaison to the Ohio Unified Certification Program process.
- 13) Provides outreach to DBEs and community organizations to advise them of opportunities.

In addition to the tasks performed by the Business Diversity Manager in implementing the DBE program, the following personnel are responsible for various tasks related to implementation of the DBE Program.

1. Senior Counsel and Procurement Manager - provide legal analysis and advice regarding rule requirements; assist in decisions regarding good faith efforts.
2. Project Managers - Provide necessary assistance to the Business Diversity Manager during bid, selection and performance to help assure bidders and contractors understand program requirements and their responsibilities for the DBE program when submitting bids and performing contract work. Serves as a resource for DBE enforcement during construction projects.
3. Procurement Specialists - Inform Business Diversity Manager of upcoming purchases and work with Business Diversity Manager to give DBE vendors maximum opportunity to quote/bid and provide products to the Authority.
4. Business Development and Communications - Assist in organizing and promoting outreach opportunities such as job fairs and networking events; liaison between the Authority and the community.
5. Organization Wide - Work with Business Diversity Manager to identify and develop opportunities for DBE participation.

#### **IV. DBE Financial Institutions**

It is the policy of the 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 contracts to make use of these institutions. After a preliminary investigation the Authority has not identified any DBE financial institutions within the community. The Authority will continue to look for such institutions and if found will make reasonable efforts to use their services. Should any DBE financial institutions be identified, information regarding their availability can be obtained from the Business Diversity Manager.

##### Research to Identify Potential DBE Financial Institutions

The Airport Authority sought the assistance of community organizations and on-line resources to identify and learn about any financial institutions owned and controlled by social and economic disadvantaged individuals in or around our local community. The Airport Authority worked with the regional Minority Supplier Development Council and the local US Small Business Administration to locate potential DBE financial institutions. None could be identified in or around our local community. Additionally, both the MSDC and the SBA concluded that at best the availability is very limited even on a national level. While the Airport Authority has been unable to identify any such financial institutions, it will continue to seek out DBE financial institutions and encourage prime contractors to do so on DOT

assisted contracts.

The language to encourage prime contractors to make use of those financial institutions has been incorporated into our construction contract general conditions, as well as stated in our bid documents as a demonstration of good faith efforts.

#### Prompt Payment §26.29

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

**Prompt Payment to Subcontractors.** Within 10 days after the Contractor receives payment from the Owner on account of a Subcontractor's Work, the Contractor shall pay that Subcontractor the amount to which the Subcontractor is entitled less retainage attributable to the amount due the Subcontractor. The Contractor shall pay interest of 1-1/2 percent per month, or any part of a month, to a Subcontractor on any undisputed amount not paid to that Subcontractor in accordance with this prompt-payment requirement. The Contractor shall pay to Subcontractor all amounts retained from any payments to Subcontractor within ten days after the Subcontractor's work is substantially complete. The Contractor shall require each Subcontractor to make payments to sub-Subcontractors in a similar manner.

The Contractor shall cause the above provisions to be included in all Subcontracts and sub-subcontracts (regardless of tier) entered into in furtherance of the Work.

The Contractor shall not include in any Subcontract any provision which conditions the Contractor's obligation to pay a Subcontractor or the timing of the Contractor's payment of a Subcontractor (except as specifically provided in this Subparagraph 9.6.3) on the Contractor's receipt of money from the Authority. The Contractor shall also prohibit each Subcontractor from including any such provision in any sub-subcontract (regardless of tier) entered into in furtherance of the Work. The intent of this Clause 9.6.3.2 is to prohibit the use on the Project of provisions commonly known as "contingent-pay provisions," "pay-if-paid provisions," and "pay-when-paid provisions."

Should the Contractor fail to comply with these provisions, the Authority may withhold payment from Contractor as provided in Paragraph 9.5 of the General Conditions, pay the Subcontractor directly as provided in Subparagraph 9.6.8 of the General Conditions, or take such other action as the Authority deems necessary to compel the Contractor's compliance.

The Authority will require prime contractors to include a similar clause in their subcontracts requiring subcontractors to promptly pay their sub-subcontractors. Unless delay or postponement of payment in accordance with this provision is approved in writing by the Authority, failure by prime contractor to comply with these prompt payment requirements will subject the prime contractor to penalties in the amount established in the contract for liquidated damages for each day prime contractor is late in paying any of its subcontractors. In addition, violation of this provision by prime contractor entitles the Authority to exercise any other rights it has by law or under the Contract.

#### **V. DBE Directory (49 CFR §26.31)**

The Authority, through the Ohio Uniform Certification Program (UCP), maintains a directory identifying all firms eligible to participate as ACDBEs. The UCP's online database 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 UCP revises the Directory on a daily basis. A link to the online directory may be found in Attachment B to this program document. The Directory is made available as follows:

1. The Ohio Unified Certification Program

The Ohio Department of Transportation,  
DBE Services Section  
1980 W. Broad Street, 1st Floor  
Columbus, OH 43223

2. The Ohio UCP Website at: [www.ohioucp.org](http://www.ohioucp.org)
3. By telephone at 1-800-459-3778

#### **VI. Over-concentration (49 CFR §26.33)**

Currently the Authority has not identified any type of work in which there exists an over-concentration of DBE firms. Should the Authority identify one or more such areas, the Authority will update its DBE program to include a new program element addressing over-concentration in which it will describe the rationale for having the program element, the specific provisions of the element (e.g., what is the over-concentration that has been identified, how does the program element work), and how interested persons would obtain information about the program element.

#### **VII. Business Development Programs (49 CFR §26.35)**

Currently, the Authority has not decided to implement a business development or mentor-protégé program. The Authority is considering the merits of future use and should the Authority determine that either or both programs are in the best interest of the Authority's DBE program, it will amend its DBE program to describe the rationale for having the new business development and/or mentor-protégé program element; the specific provisions of the element(s), including who is eligible to participate and how the program element(s) work; and how interested persons can obtain information about the program element(s).

#### **VIII. Monitoring and Enforcement Mechanisms (49 CFR §26.37)**

The Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. *False, fraudulent or dishonest conduct.* The Authority 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. *Legal remedies available to the Authority.* The Authority will consider legal and contract remedies available to it under federal, state and local law, 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 [describe the mechanism].
  - a) *After Bid Opening* - Following a bid opening, the Business Diversity Manager will investigate and verify that the apparent low bidder either will meet the contract goal or has made a good faith effort to achieve the goal. As part of this verification process, the Business Diversity Manager will contact all DBEs whose quotes the apparent low bidder has indicated in

the bid documents having accepted for purposes of preparing its bid. The Business Diversity Manager will verify that the DBE(s) so indicated will be performing as subcontractor(s) on the project and that the amount(s) indicated in the bid accurately reflect(s) the anticipated subcontract amount(s). As part of this verification, the Business Diversity Manager will obtain copies of the subcontract agreements between the apparent low bidder and its DBE subcontractor(s).

b) *After contract award/execution* - The Authority will only credit DBE participation toward overall and contract goals after payments have been made to the DBE subcontractor(s). The Business Diversity Manager will verify that payment has been made. Once the apparent low bidder has been determined, the Business Diversity Manager will contact the subcontractors listed in the bid documents, notifying them of their subcontract. Completed forms confirming the type of work to be performed and the amount of the subcontract will be required from both the prime contractor and its subcontractors as a compliance mechanism. Copies of canceled checks and invoices may be requested by subcontractors to verify payments and contract amount. Subcontractors are also required to sign a sworn affidavit verifying contract amounts.

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

## **Subpart C – Goals, Good Faith Efforts and Counting**

### **I. Set Asides or Quotas (49 CFR §26.43)**

The Authority does not use quotas in any way in the administration of its DBE program.

### **II. Overall Goals (49 CFR §26.45)**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment C to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) the Authority will submit its overall goal to DOT on August 1 every three years, beginning August 1, 2010. Before establishing the overall triennial goal, the Authority will consult with the minority, women's, and contractor groups, community organizations, and other organizations or officials to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the 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 our administrative offices located at Port Columbus International Airport for 30 days following the date of the notice, and that the Authority and U.S. DOT will accept comments on the goals for 45 days from the date of the notice.

Below is a list of proposed media and communication outlets the Authority will see to utilize in publishing notices of its proposed overall goals.

- 1) Columbus Dispatch
- 2) Columbus Post
- 3) Minority Communicator

- 4) Ohio Contractors Association
- 5) Ohio MBE

The public notice announcements will not be exclusive to the entities listed. 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.

### **III. Breakout of Estimated Race-Neutral and Race-Conscious Participation (49 CFR § 26.51 (a-c))**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment C to this program. This section of the program will be updated annually when the goal calculation is updated.

### **IV. Contract Goals (49 CFR §26.51)**

The Authority will use contract goals to meet any portion of the overall goal the 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 a DOT-assisted contract.

### **V. Good Faith Efforts Procedures (49 CFR §26.53)**

#### Demonstration of Good Faith Efforts §26.53(a) & (c)

The obligation of each bidder/proposer is to make good faith efforts. The bidder/proposer 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 Authority requires bidders/proposers to show it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The Authority will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer has made. The efforts employed by the bidder/proposer should be those that one could reasonably expect a bidder to take if the bidder/proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal.

#### Responsible Personnel

The following personnel are responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: Damita Brown, Business Diversity Manager.

The Authority will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before the Authority commits to the performance of the contract by the bidder/proposer.

#### Information To Be Submitted §(26.53(b))

Authority treats bidder/proposer's 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/proposer's to submit the following information with its bid or proposal:

- 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 in the contract;
- 4) Written and signed documentation of commitment by the prime contractor 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 contractor's commitment; and
- 6) If the contract goal is not met, evidence of good faith efforts.

The information required must be presented under sealed bid procedures, as a matter of responsiveness or with initial proposals under contract negotiation procedures, or at any time before the Authority commits to the performance of the contract by the bidder as a matter of responsibility.

#### Administrative Reconsideration §(26.53(d))

Within ten (10) calendar days of being informed by the Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposer's should make this request in writing to the following reconsideration official:

Tory Richards, VP Governmental Affairs and Strategy  
4600 International Gateway  
Columbus, OH 43219  
Phone: (614) 239-4016  
Fax: (614) 239-4006  
E-mail: [TRichardson@ColumbusAirports.com](mailto:TRichardson@ColumbusAirports.com)

The reconsideration official will not have played any role in the original determination that the bidder/proposer did not make 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 the Authority's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. 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 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. The Authority 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, the Authority will require the prime contractor to obtain 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, the Authority 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 Authority may issue a termination for default proceeding.

#### Sample Bid Specification

Bidders shall make a good faith effort to obtain Disadvantaged Business Enterprise (DBE) participation of \_\_\_\_\_% of the dollar value of the Contract in accordance with the FAA DBE Program, 49 CFR 26, and the goals established by the Authority. For questions regarding the DBE Program, contact the Manager - Business Diversity at (614) 239-5049. Contractors seeking DBE certification should contact the Ohio Department of Transportation's (ODOT) Unified Certification Program at (614) 728-9598 or visit their website at [www.ohiocup.org](http://www.ohiocup.org).

It is the policy of the Authority that all businesses shall have the maximum opportunity to participate in the performance of contracts. This includes businesses that qualify for a valid small, disadvantaged, minority, or female certification or designation from a duly authorized federal, state or local governmental entity.

The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Authority deems appropriate.

Contractor further agrees that each subcontract it signs with a sub-contractor will include the following language as a requirement of their agreement. The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. 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 Authority deems appropriate.

Contractor understands that the Authority in the operation and use of Airport facilities, is committed to an affirmative action program and will not, on the grounds of race, color, religion, sex, or national origin, discriminate or permit discrimination against any person or group of persons in the manner prohibited by Part 21 of the U.S. Department of Transportation Regulations (49 CFR Part 21). Contractor hereby agrees that the premises of its employment office shall be posted to such effect as required by such regulation. Contractor represents and warrants that it has an Affirmative Action Plan to the extent required to comply with the Federal rules and regulations of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance.

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, age, handicap, ancestry or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, creed, religion, sex, age, handicap, ancestry or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or termination; rates of pay or other forms of compensation; and selection for training. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that the Contractor is an Equal Opportunity Employer.

(c) It is the policy of the Authority that business concerns owned and operated by minority and female persons shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the Authority.

(d) The Contractor shall permit access to any relevant and pertinent reports and documents by the Authority for the purpose of verifying compliance with this Article. All such materials provided to the Authority by the Contractor shall be considered confidential.

(e) The Contractor and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The Contractor will take such action with respect to any subcontract as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.

(f) Failure or refusal of the Contractor or a subcontractor to comply with these Equal Opportunity Provisions may result in cancellation of this Agreement or any other action prescribed or allowable under law.

For purchases financed in whole or in part with Federal funds, Requirements of 49 CFR Part 26 shall apply in addition to those listed above, as follows:

It is the policy of the United States Department of Transportation ("DOT") that disadvantaged business enterprises (DBE) as defined in 49 CFR Part 26 ("DBEs") shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Contractor agrees to ensure that DBEs have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform contracts.

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

#### **VI. Counting DBE Participation (49 CFR §26.55)**

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

In determining whether a DBE bidder/proposer for a prime contract has met a contract goal, the Airport Authority counts the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

## **Subpart D – Certification Standards**

### **I. Certification Process (49 CFR §26.61 – 26.73)**

The Authority is a member of the Ohio UCP. The Ohio UCP is a "one stop" certification process for the Federal DBE Programs in Ohio administered by The Ohio Department of Transportation. The UCP uses

the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP makes its certification decisions based on the facts as a whole.

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

The Ohio Unified Certification Program  
The Ohio Department of Transportation  
DBE Services Section  
1980 W. Broad Street, 1st Floor  
Columbus, OH 43223  
Phone: (614) 728-9598  
Fax: (614) 728-2078  
Website: [www.ohiucp.org](http://www.ohiucp.org)

## **Subpart E – Certification Procedures**

### **I. Unified Certification Programs (49 CFR §26.81)**

The Authority is a member of the Ohio UCP. The Ohio UCP is a "one stop" certification process for the Federal DBE Programs in Ohio administered by The Ohio Department of Transportation. The UCP will meet all requirements of this section. The following is a brief description of the UCP:

The Ohio UCP consolidates all DBE firms certified in the state of Ohio into one centralized DBE Directory for USDOT funded contracts. A business' DBE certification is valid at any Ohio entity that receives USDOT funds and has a DBE Program. Small businesses desiring DBE certification must submit their application to one of the five certifying agencies within the state. Firms certified by each of the five agencies are included into one consolidated and centralized DBE Directory.

### **II. Procedures for Certification Decisions**

#### **Re-certifications §26.83(a) & (c)**

The DBE certification process allows small businesses, which are independently owned and controlled by one or more socially and economically disadvantaged individuals, admittance into the DBE Program. The UCP's goal is to remove barriers to DBE participation in DOT-assisted contracts. DBE certification standards and procedures include collecting information, applying the criteria for eligibility, providing a DBE eligibility determination and implementing an appeal process for denials and de-certifications.

In accordance with 49 CFR Part 26:

1. The UCP makes certification determinations based on all of the requirements of Part 26 Subpart D - Certification Standards and Subpart E- Certification Procedures;
2. The UCP provides eligibility determinations for new candidates within 90 days of receipt of a complete application;
3. The UCP safeguards applicant information and documents in accordance with §§26.109, 26.67(a)(2)(ii); and
4. The UCP cooperates fully with other U.S. DOT recipients regarding all DBE issues.

There is no application fee for DBE certification. All applications for certification must be accompanied by a sworn affidavit attesting to the accuracy and truthfulness of the information provided.

The Ohio UCP certification application must be submitted by each firm seeking DBE certification including SBA 8(a) and Small Disadvantaged Businesses (SDB).

The ODOT DBE Certification Officers conduct an on-site review at the applicant firm's premises after a complete application has been received. The purpose of the on-site review is to verify information submitted, assess the firm's capabilities and capacity, and determine the independence of the firm and the control or management of the firm demonstrated by the disadvantaged owner. Applicant firms must allow the DBE Certification Officer to examine and review all books, records, documents and files of the firm and its affiliates, inspect its place of business and equipment, and permit interviews of its principals, agents and employees.

Refusal to permit such inquiries shall be grounds for denial of certification. The DBE Certification Officer may contact firms or individuals associated with or having direct knowledge of the firm applying for certification as a normal part of its investigation.

The DBE Certification Officers will make every reasonable effort to schedule the on-site review within 30 days of receipt of a completed application and all necessary supporting documentation from the firm applying for DBE certification.

Prior to the on-site being conducted, a thorough file review is performed, and a letter is sent, as well as e-mail notification when applicable, to the president of the firm stating the date, time and location of the on-site interview. If the applicant is unable to attend the scheduled interview, the on-site will be rescheduled and a second notification letter sent. Additionally, a follow-up phone call will be made to the firm. If the applicant fails to attend the review, their file is closed and they are denied certification.

A standard set of questions, (Exhibit L), will be asked of all firms and every concern will be addressed. Hard copies of the report become part of the permanent certification file.

The on-site review conducted for firms headquartered or having their principle place of business in Ohio will include:

1. A visit to the firm's home office.
2. A review of any of the firm's records as deemed necessary.
3. Personal interviews with the firm's principal owners, managers and other individuals as deemed necessary.
4. On-site visits to the firm's active ODOT construction projects (if applicable).
5. Review of information from other states if the firm is or has been certified as a DBE in another state.
6. Review of any information deemed necessary and obtained from other sources.

The following applies for all applications for DBE certification from firms not headquartered or having their principle place of business in Ohio:

1. If a firm applying for DBE certification is from a state other than Ohio, the firm must be certified as a DBE under 49 CFR part 26 in its home state before applying for certification in Ohio and must provide proof of its certification with an agency which uses 49 CFR Part 26.
2. If the firm is from another state, an on-site visit report will be requested from the firm's home state certifying agency. If the firm's home state has never conducted an on-site review, ODOT will not process the firm's application until such time as an on-site has been conducted by the home state and the on-site review has been received by ODOT.
3. The findings of the investigation will be compiled for a determination of eligibility as soon as possible following the completed review.
4. The firm must file an Ohio UCP DBE Certification Application.

The ODOT may confirm the existence of an office operated by the firm within Ohio, the type of work the firm provides and the date the firm was established. A list of three contracts that the firm has completed or is performing will be obtained and the ODOT may perform an on-site review at the Ohio business location.

#### "No Change" Affidavits and Notices of Change §(26.83(j))

The UCP requires all DBEs to inform them, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the DBE's application for certification. The UCP also requires all owners of all certified DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the Authority under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million or the SIC gross revenue threshold for my company's industry, whichever is less.

The UCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts and an updated personal net worth statement. The personal net worth form will be required for all new firms seeking DBE status in the DBE Program. The personal net worth form will also be used for all firms seeking to re-certify their firm as a Disadvantage Business Enterprise.

The Ohio UCP certification manual has been provided as Attachment D to this program.

#### Denials of Initial Requests for Certification § 26.85

If the UCP denies a firm's application or decertify it, it may not reapply until 12 months have passed from that action.

#### Removal of a DBE's Eligibility §26.87

In the event the UCP proposes to remove a DBE's certification, the UCP will follow procedures consistent with 26.87. Attachment D to this program sets forth these procedures in detail. The UCP ensures separation of functions in a de-certification and have determined that a staff Hearing Officer will serve as the decision-maker in de-certification proceedings. The UCP has established an administrative

“firewall” to ensure that the identified Hearing Officer will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

#### Certification Appeals §26.87

Any firm or complainant may appeal the UCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., SE  
Washington, DC 20590  
Phone: (202) 366-4754  
TTY: (202) 366-9696  
Fax: (202) 366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

#### Information, Confidentiality, Cooperation § 26.109

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

The Ohio open records act guides the Authority regarding the release of public records and is found at Ohio Revised Code Sections 149.011 (definitions) and 149.43 (See Attachment F for both sections). ORC 149.011(G) defines a record as any document regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any political subdivision, including the Authority, which serves to document its organization, functions, policies, decisions, procedures, operations, or other activities. The Authority's obligations for making records available to the public upon request are explained in Section 149.43.

To the extent 49 CFR Part 26 does not exempt information provided in furtherance of the Authority's DBE program from disclosure, the Authority must make records related to the program available to the public. Ohio law exempts “trade secrets” from disclosure in ORC 1333.61. Trade secrets include financial information if it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and it is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Additionally, and notwithstanding any contrary provisions of state or local law, the Authority 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.

Notwithstanding any contrary provisions of state or local law, the Authority 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

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

The Authority 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. The Authority Business Diversity Manager will perform interim tracking of contract payments to DBEs. The tracking will include identifying payments to DBE subcontractors by reviewing the subcontract award forms and verifying copies of canceled checks, sworn affidavits and other compliance mechanisms that are currently in place requiring that primes have made full payments to their subcontractors. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

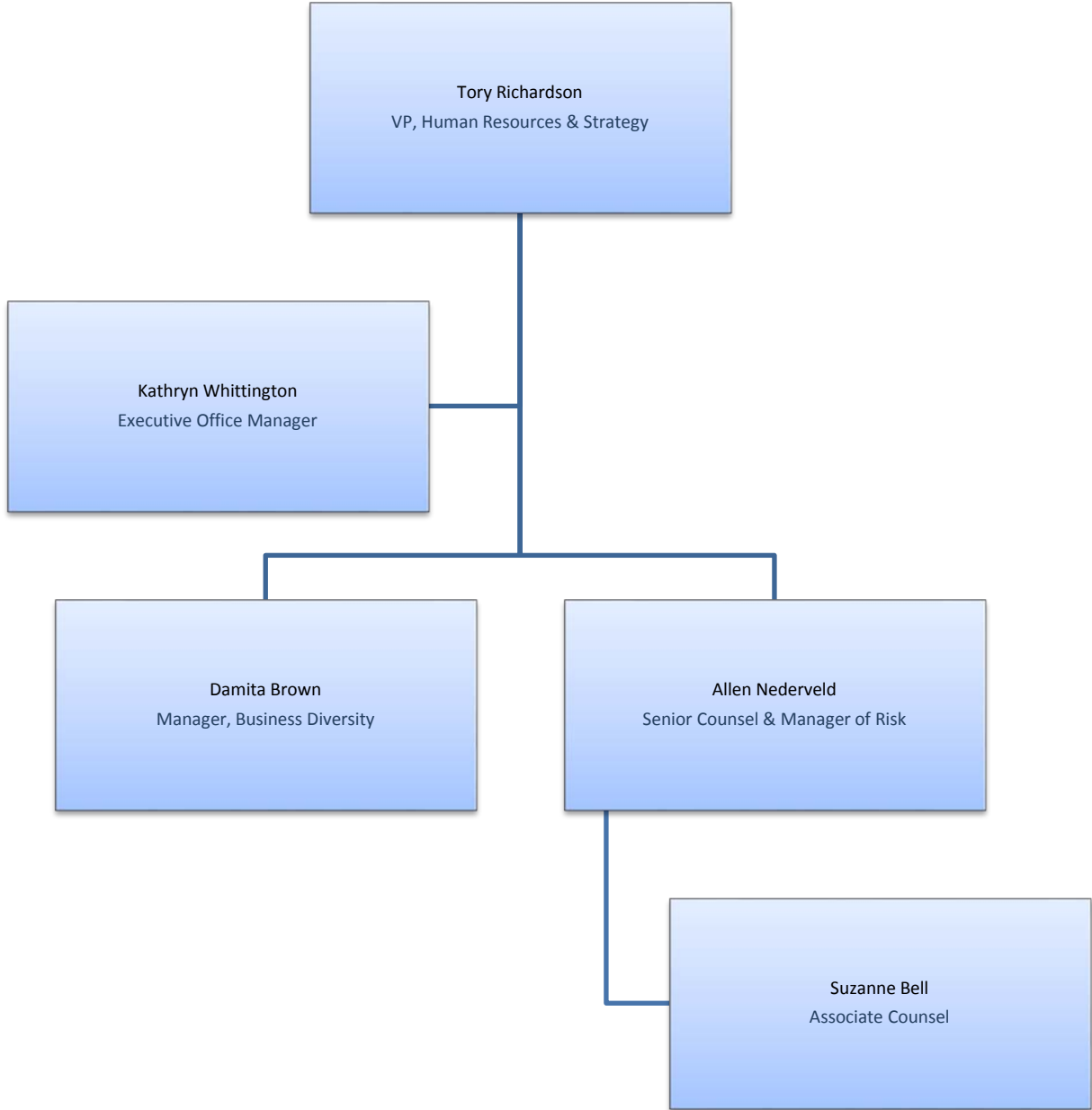
## Attachments

- Attachment A - Organizational chart
- Attachment B - DBE directory
- Attachment C - Goal calculation methodology
- Attachment D - Certification application/required documentation
- Attachment E - Ohio UCP Certification Manual
- Attachment F - Ohio public records laws (ORC 149.011 and 149.43)
- Attachment G - 49 CFR Part 26
- Attachment H - Sample Bidders List



Attachment A - Organizational chart

GOVERNMENTAL AFFAIRS & STRATEGY DIVISION



Attachment B - DBE directory

<https://www.ohiucp.org/index.vm>

## Attachment C - Goal Calculation Methodology

### OVERALL GOAL

The Columbus Regional Airport Authority's FY 2011-2013 overall goal for DBE participation is 18% of the projects receiving AIP Grant assistance during FY 2011-2013. At this time, CRAA expects to receive approximately \$133,720,712 in assistance from the FAA. This equates to a DBE participation goal of \$24,069,728 in fiscal years 2011-2013.

### METHODOLOGY

The procedures recipients must use in determining their overall goal are outlined in 49 CFR Part 26:45 and includes the following steps.

1. Identify the anticipated FAA assisted projects for the upcoming fiscal year
2. Determine the total value of these assisted projects.
3. Breakdown the type of industries needed to complete each project and determine the NAICS code for each.
4. Total the dollar value of contracting necessary to complete the FAA assisted projects by NAICS Code.
5. Calculate the percentage each NAICS industry code represents of the total FAA assisted contracts.
6. Determine the total number of firms available in the Columbus MSA to compete for contracts in the industry codes listed.
7. Determine the number of ready, willing and able companies currently certified as DBE/MBE/FBE in the Columbus MSA.
8. Calculate the percentage of DBE/MBE/FBE firms in the Columbus MSA
9. Calculate a weighted goal for each industry code by multiplying the percentage of DBE/MBE/FBE firms by the percentage representation of each industry in the total FAA assisted amount.
10. Total the weighted goal for each industry to achieve the weighted overall goal for the Step One calculation.
11. Adjust the Step One calculation by considering additional information, which may affect the potential for DBE participation in FAA assisted projects.

Such information includes:

- a. The median figure of DBE participation in previous fiscal years.
- b. Information gained from disparity studies performed in the area

- c. Information gather from accepted authorities regarding discrimination or barriers to contracting by minority or female-owned companies
- 12. Determine the amount of the overall goal that can be reached from race neutral measures and the subsequent amount the must be reached through race-conscious measures.
- 13. Publicize the overall goal to the public and conduct a public meeting to answer questions and provide for public input into the goal setting process
- 14. Report final goal to the Federal Aviation Administration.

STEP ONE CALCULATION

A. Federally Assisted Projects

FY 2011	
Project Name	Total
1) Replacement Runway Obstruction Mitigation - Real Estate Services	\$65,875
2) Runway 5R-23L Pavement & Lighting Rehab. Phase 3 at LCK	\$4,850,000
3) Residential Sound Insulation Program – Phase XI (Construction)	\$2,080,000
4) Earthwork Package and Stormwater Detention for Turkey Run	\$29,256,958
5) Replacement Runway-Obstruction Mitigation	\$220,000
6) Airport Golf Course Modifications	\$2,850,000
FY 2012	
Project Name	Total
7) Airside Pavement & Lighting Rehab at LCK	\$1,950,000
8) Acquisition & Demolition of Properties in New 10R RPZ	\$100,101
9) Replacement Runway-Paving/Electrical/NAVAID Package	\$56,753,400
10) Runway 10R-28L Replacement & Convert Existing 10R/28L to Taxiway	\$18,541,000
11) New Air Traffic Control Tower at LCK – Design Only	\$312,000
12) Taxiway A Rehabilitation – Design	\$276,500
13) Airfield Electrical Vault Replacement	\$1,500,000
14) “B” Ramp Rehabilitation at TZR	\$768,790
FY 2013	
Project Name	Total
15) Taxiway A Rehabilitation at LCK- Construction	\$3,950,000
16) New Air Traffic Control Tower at LCK - Construction	\$5,311,088
17) Airfield Lighting LED Conversion	\$75,000
18) Ramp #3 Phase 4 Reconstruction at LCK	\$4,860,000
Total Federally Assisted Projects	\$133,720,712

B. NAICS Industry Code required to complete projects

NAICS CODES & Anticipate Expenditure Amount					
NAICS Code	Amount	% of Total	NAICS Code	Amount	% of Total
236118	\$2,350,000	1.76%	484220	\$4,654,000	3.48%
236220	\$3,336,088	2.49%	531390	\$165,976	.12%
237110	\$4,544,000	3.40 %	541310	\$612,000	.46%
237990	\$870,000	.65%	541330	\$1,386,790	1.04%
237310	\$73,350,658	54.85%	541370	\$235,000	.18%
238210	\$27,790,000	20.78%	541380	\$401,000	.30%
238910	\$8,766,200	6.56%	561730	\$2,924,000	2.19%
238990	\$1,970,000	1.47%	561990	\$365,000	.27%
<b>TOTAL</b>			<b>\$133,720,712 100%</b>		

Total availability of companies to perform work (See Exhibit 2 of the FY 2011-2013 Goals Report)

Normal Market Area – CRAA has defined its market area as the Columbus Metropolitan Statistical Area. Most of the contractors bidding on contracts and performing work at CRAA airports come from this area. The Columbus MSA includes Delaware, Fairfield, Franklin, Licking, Madison, Morrow, Pickaway and Union counties.

Ready, Willing and Able Disadvantaged Business Enterprises – CRAA has defined its pool of DBEs as companies located in the Columbus MSA who are currently certified as a DBE, Minority Business Enterprise (MBE), Female Business Enterprise (FBE), or Woman Business Enterprise (WBE) with a governmental agency in Central Ohio. The agencies certifying companies in these programs include The Ohio Department of Transportation, Ohio Department of Administrative Services, and the City of Columbus.

Completion of Step One Calculation – The information gathered in steps A-D listed above was used to calculate the Step One goal of 18% for fiscal years 2011-2013 (See Exhibit 1).

**STEP TWO CALCULATION**

- A. Adjustments to the Step One Calculation Based on Past Participation – The median past participation over the last three years is 28.77%.

This figure is considered a deviation from what is generally expected / achieved, due to the awarding of two of four AIP assisted contracts to DBE primes in fiscal year 2007. In the absence of this data, the Authority's median past participation would be 19%, a number more closely aligned with historical trends. As such, the Authority will not choose to adjust the Step One figure for past participation. (See table below).

Past Performance Calculation

Past Performance Breakdown			
FY	FY	FY	Median Past Performance

2007	2008	2009	Fiscal Years 2007 - 2009
*52%	15%	19.3%	28.77%
Median Past Performance (excluding) 2007 data			17.15%
Step 1 Goal calculation (In absence of FY 2007 data - see note on goal report).			19%
Average of Step 1 Goal and Adjusted Median Past Performance			18.1%

\* Fiscal Year 2007 DBE accomplishments represent an anomaly in the Authority's long-term, overall DBE participation / accomplishments. The Authority let four (4) AIP assisted contracts, two of which were awarded to DBE prime contractors, using race neutral means. As a result, the total DBE accomplishments reported for that year were higher than what is generally expected and achieved.

- B. Other Step Two Considerations – CRAA has considered the impact of disparity studies and similar disparities in the ability of DBE firms to obtain financing, bonding and insurance. CRAA has concluded that these findings will not result in a substantial change in the overall DBE goal.

#### RACE/ GENDER NEUTRAL VERSUS RACE/ GENDER CONSCIOUS SPLIT

CRAA has established a proposed goal of 18% of which it anticipates 5% can be achieved through race/gender neutral means and 13% must be achieved through race/gender conscious means, namely project specific participation goals.

CRAA has enjoyed tremendous success in its DBE program and has become a leader within the state of Ohio for its stellar DBE program. CRAA has built a reputation and expectation within the contracting community that Disadvantaged Business Enterprises will have the maximum opportunity to participate in projects owned by the Authority and the contracting community has responded favorably. CRAA's ability to achieve its overall goals in recent years can be largely attributed to the use of contract goals established during the bidding process. Our use of contract goals has had the impact of creating positive working relationships between our prime contractors and many DBE firms. These relationships have had the benefit of extending to non-AIP assisted projects and other projects owned by other agencies and organizations occurring throughout the region.

Additionally, CRAA has had some success in building the capacity of DBE firms to competitively bid and be awarded prime contracts. In FY 2010, CRAA will continue to work with DBE firms to improve their capacity, financial strength, and technical knowledge in order to assist them to competitively compete for prime contract opportunities. CRAA's DBE Liaison Officer engages in extensive outreach and networking events throughout the year to raise awareness of CRAA projects and business opportunities and develop relationships that may yield tangible benefits for the DBE Community. During FY 2011 - 2013, CRAA will continue its partnerships with local, statewide and national organizations to identify, develop, and sponsor various training and business assistance opportunities that will assist DBE companies in their success and growth development. Additionally, CRAA is seeking to develop a business coaching or mentoring program for DBE companies. Likewise, CRAA will continue to host marketing meetings for DBE companies interested in doing business with CRAA and provide them with information that will aid them in their endeavors to do business with CRAA.

Other race neutral measures CRAA will use to help meet its goal are:

1. Revising and publishing the DBE directory to all prime contractors interested in bidding opportunities at the airport authority.

2. Sponsoring and participating in local, state and regional networking sessions between potential prime contractors and subcontractors at events unrelated to specific bid opportunities. These meetings will be used simply to introduce companies to one another and to allow companies to share information with one another.
3. Publishing the DBE Directory and notices of bid opportunities on the CRAA Internet Web Site and other targeted minority business print media, website, and forums to ensure the widest number of prime contractors have access to qualified subcontractors.
4. Working with other Central Ohio agencies to provide technical assistance, training and mentoring to DBE firms interested in growing to compete on larger government contracts.

Through these and other initiatives to find new DBEs, and improve the ability of existing DBE firms, CRAA expects to increase the race/gender neutral portion of goal attainment.



Attachment D - Certification application/required documentation



Adobe Acrobat  
Document

Ohio DBE Unified Certification Application Instructions



Adobe Acrobat  
Document

Ohio DBE Unified Certification Application

## Attachment E – Ohio UCP Certification Procedures



Adobe Acrobat  
Document

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OH UCP Certification Manual

## Attachment F - Ohio Public Records Laws (ORC 149.011 and 149.43)

### **149.011 Documents, reports, and records definitions.**

As used in this chapter, except as otherwise provided:

(A) "Public office" includes any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government. "Public office" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision. "State agency" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(C) "Public money" includes all money received or collected by or due a public official, whether in accordance with or under authority of any law, ordinance, resolution, or order, under color of office, or otherwise. It also includes any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

(D) "Public official" includes all officers, employees, or duly authorized representatives or agents of a public office.

(E) "Color of office" includes any act purported or alleged to be done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

(F) "Archive" includes any public record that is transferred to the state archives or other designated archival institutions because of the historical information contained on it.

(G) "Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

Amended by 129th General Assembly File No. 1, HB 1, § 1, eff. 2/18/2011.

Effective Date: 09-26-2003; 2006 HB9 09-29-2007

## **149.43 [Effective Until 10/17/2011] Availability of public records for inspection and copying.**

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;

(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;

(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;

(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;

(g) Trial preparation records;

(h) Confidential law enforcement investigatory records; (i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;

(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;

(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;

(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;

(m) Intellectual property records;

(n) Donor profile records;

(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;

(p) Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;

(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;

(r) Information pertaining to the recreational activities of a person under the age of eighteen;

(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(z) Records listed in section 5101.29 of the Revised Code;

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(bb) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation:

(a) The address of the actual personal residence of a peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(5) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(5) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means

information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.



(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the

requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation and, if the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of

appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2)(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk commercial special extraction request" does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) "Commercial" means profit-seeking production, buying, or selling of any good, service, or other product.

(d) "Special extraction costs" means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, "surveys, marketing, solicitation, or resale for commercial purposes" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 02-12-2004; 04-27-2005; 07-01-2005; 10-29-2005; 03-30-2007; 2006 HB9 09-29-2007; 2008 HB214 05-14-2008; 2008 SB248 04-07-2009

This section is set out twice. See also § [149.43](#), as amended by 129th General Assembly File No. 43, HB 64, § 1, eff. 10/17/2011.

#### **149.43 [Effective 10/17/2011] Availability of public records for inspection and copying**

(A) As used in this section:

(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:

(a) Medical records;

(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;

- (c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;
- (d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;
- (e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;
- (f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;
- (g) Trial preparation records;
- (h) Confidential law enforcement investigatory records;
- (i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;
- (j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;
- (k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;
- (l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;
- (m) Intellectual property records;
- (n) Donor profile records;
- (o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;
- (p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;
- (q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;
- (r) Information pertaining to the recreational activities of a person under the age of eighteen;
- (s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of the Revised Code, and child fatality review data submitted by the child fatality review board to the department of health or a national child death review database, other than the report prepared pursuant to division (A) of

section 307.626 of the Revised Code;

(t) Records provided to and statements made by the executive director of a public children services agency or a prosecuting attorney acting pursuant to section 5153.171 of the Revised Code other than the information released under that section;

(u) Test materials, examinations, or evaluation tools used in an examination for licensure as a nursing home administrator that the board of examiners of nursing home administrators administers under section 4751.04 of the Revised Code or contracts under that section with a private or government entity to administer;

(v) Records the release of which is prohibited by state or federal law;

(w) Proprietary information of or relating to any person that is submitted to or compiled by the Ohio venture capital authority created under section 150.01 of the Revised Code;

(x) Information reported and evaluations conducted pursuant to section 3701.072 of the Revised Code;

(y) Financial statements and data any person submits for any purpose to the Ohio housing finance agency or the controlling board in connection with applying for, receiving, or accounting for financial assistance from the agency, and information that identifies any individual who benefits directly or indirectly from financial assistance from the agency;

(z) Records listed in section 5101.29 of the Revised Code;

(aa) Discharges recorded with a county recorder under section 317.24 of the Revised Code, as specified in division (B)(2) of that section;

(bb) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility.

(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:

(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;

(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;

(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;

(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.

(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

(5) "Intellectual property record" means a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

(6) "Donor profile record" means all records about donors or potential donors to a public institution of higher education except the names and reported addresses of the actual donors and the date, amount, and conditions of the actual donation.

(7) "Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information" means any information that discloses any of the following about a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation:

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;

(b) Information compiled from referral to or participation in an employee assistance program;

(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer;

(e) The identity and amount of any charitable or employment benefit deduction made by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's employer from the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's compensation unless the amount of the deduction is required by state



or federal law;

(f) The name, the residential address, the name of the employer, the address of the employer, the social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of the spouse, a former spouse, or any child of a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;

(g) A photograph of a peace officer who holds a position or has an assignment that may include undercover or plain clothes positions or assignments as determined by the peace officer's appointing authority.

As used in divisions (A)(7) and (B)(9) of this section, "peace officer" has the same meaning as in section 109.71 of the Revised Code and also includes the superintendent and troopers of the state highway patrol; it does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

As used in divisions (A)(7) and (B)(5) of this section, "correctional employee" means any employee of the department of rehabilitation and correction who in the course of performing the employee's job duties has or has had contact with inmates and persons under supervision.

As used in divisions (A)(7) and (B)(5) of this section, "youth services employee" means any employee of the department of youth services who in the course of performing the employee's job duties has or has had contact with children committed to the custody of the department of youth services.

As used in divisions (A)(7) and (B)(9) of this section, "firefighter" means any regular, paid or volunteer, member of a lawfully constituted fire department of a municipal corporation, township, fire district, or village.

As used in divisions (A)(7) and (B)(9) of this section, "EMT" means EMTs-basic, EMTs-I, and paramedics that provide emergency medical services for a public emergency medical service organization. "Emergency medical service organization," "EMT-basic," "EMT-I," and "paramedic" have the same meanings as in section 4765.01 of the Revised Code.

As used in divisions (A)(7) and (B)(9) of this section, "investigator of the bureau of criminal identification and investigation" has the meaning defined in section 2903.11 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by informing the requester of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.

(3) If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing. The explanation shall not preclude the public office or the person responsible for the requested public record from relying upon additional reasons or legal authority in defending an action commenced under division (C) of this section.

(4) Unless specifically required or authorized by state or federal law or in accordance with division (B) of this section, no public office or person responsible for public records may limit or condition the availability of public records by requiring disclosure of the requester's identity or the intended use of the requested public record. Any requirement that the requester disclose the requester's identity or the

intended use of the requested public record constitutes a denial of the request.

(5) A public office or person responsible for public records may ask a requester to make the request in writing, may ask for the requester's identity, and may inquire about the intended use of the information requested, but may do so only after disclosing to the requester that a written request is not mandatory and that the requester may decline to reveal the requester's identity or the intended use and when a written request or disclosure of the identity or intended use would benefit the requester by enhancing the ability of the public office or person responsible for public records to identify, locate, or deliver the public records sought by the requester.

(6) If any person chooses to obtain a copy of a public record in accordance with division (B) of this section, the public office or person responsible for the public record may require that person to pay in advance the cost involved in providing the copy of the public record in accordance with the choice made by the person seeking the copy under this division. The public office or the person responsible for the public record shall permit that person to choose to have the public record duplicated upon paper, upon the same medium upon which the public office or person responsible for the public record keeps it, or upon any other medium upon which the public office or person responsible for the public record determines that it reasonably can be duplicated as an integral part of the normal operations of the public office or person responsible for the public record. When the person seeking the copy makes a choice under this division, the public office or person responsible for the public record shall provide a copy of it in accordance with the choice made by the person seeking the copy. Nothing in this section requires a public office or person responsible for the public record to allow the person seeking a copy of the public record to make the copies of the public record.

(7) Upon a request made in accordance with division (B) of this section and subject to division (B)(6) of this section, a public office or person responsible for public records shall transmit a copy of a public record to any person by United States mail or by any other means of delivery or transmission within a reasonable period of time after receiving the request for the copy. The public office or person responsible for the public record may require the person making the request to pay in advance the cost of postage if the copy is transmitted by United States mail or the cost of delivery if the copy is transmitted other than by United States mail, and to pay in advance the costs incurred for other supplies used in the mailing, delivery, or transmission.

Any public office may adopt a policy and procedures that it will follow in transmitting, within a reasonable period of time after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed

the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person responsible for public records, having custody of the records of the agency employing a specified peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation shall disclose to the journalist the address of the actual personal residence of the peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation and, if the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child is employed by a public office, the name and address of the employer of the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's, correctional employee's, youth services employee's, firefighter's, EMT's, or investigator of the bureau of criminal identification and investigation's spouse, former spouse, or child. The request shall include the journalist's name and title and the name and address of the journalist's employer and shall state that disclosure of the information sought would be in the public interest.

(b) Division (B)(9)(a) of this section also applies to journalist requests for customer information maintained by a municipally owned or operated public utility, other than social security numbers and any private financial information such as credit reports, payment methods, credit card numbers, and bank account information.

(c) As used in division (B)(9) of this section, "journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

(C)(1) If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, that awards court costs and reasonable attorney's fees to the person that instituted the mandamus action, and, if applicable, that includes an order fixing statutory damages under division (C)(1) of this section. The mandamus action may be commenced in the court of common pleas of the county in which division (B) of this section allegedly was not complied with, in the supreme court pursuant to its original jurisdiction under Section 2 of Article IV, Ohio Constitution, or in the court of appeals for the appellate district in which division (B) of this section allegedly was not complied with pursuant to its original jurisdiction under Section 3 of Article IV, Ohio Constitution.

If a requestor transmits a written request by hand delivery or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requestor shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed. The award of statutory damages shall be in addition to all other remedies authorized by this section.

The court may reduce an award of statutory damages or not award statutory damages if the court determines both of the following:

(a) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B) of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(b) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(2)(a) If the court issues a writ of mandamus that orders the public office or the person responsible for the public record to comply with division (B) of this section and determines that the circumstances described in division (C)(1) of this section exist, the court shall determine and award to the relator all court costs.

(b) If the court renders a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section, the court may award reasonable attorney's fees subject to reduction as described in division (C)(2)(c) of this section. The court shall award reasonable attorney's fees, subject to reduction as described in division (C)(2)(c) of this section when either of the following applies:

(i) The public office or the person responsible for the public records failed to respond affirmatively or negatively to the public records request in accordance with the time allowed under division (B) of this section.

(ii) The public office or the person responsible for the public records promised to permit the relator to inspect or receive copies of the public records requested within a specified period of time but failed to fulfill that promise within that specified period of time.

(c) Court costs and reasonable attorney's fees awarded under this section shall be construed as remedial and not punitive. Reasonable attorney's fees shall include reasonable fees incurred to produce proof of the reasonableness and amount of the fees and to otherwise litigate entitlement to the fees. The court may reduce an award of attorney's fees to the relator or not award attorney's fees to the relator if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of the conduct or threatened conduct of the public office or person responsible for the requested public records that allegedly constitutes a failure to comply with an obligation in accordance with division (B)

of this section and that was the basis of the mandamus action, a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records did not constitute a failure to comply with an obligation in accordance with division (B) of this section;

(ii) That a well-informed public office or person responsible for the requested public records reasonably would believe that the conduct or threatened conduct of the public office or person responsible for the requested public records as described in division (C)(2)(c)(i) of this section would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(D) Chapter 1347. of the Revised Code does not limit the provisions of this section.

(E)(1) To ensure that all employees of public offices are appropriately educated about a public office's obligations under division (B) of this section, all elected officials or their appropriate designees shall attend training approved by the attorney general as provided in section 109.43 of the Revised Code. In addition, all public offices shall adopt a public records policy in compliance with this section for responding to public records requests. In adopting a public records policy under this division, a public office may obtain guidance from the model public records policy developed and provided to the public office by the attorney general under section 109.43 of the Revised Code. Except as otherwise provided in this section, the policy may not limit the number of public records that the public office will make available to a single person, may not limit the number of public records that it will make available during a fixed period of time, and may not establish a fixed period of time before it will respond to a request for inspection or copying of public records, unless that period is less than eight hours.

(2) The public office shall distribute the public records policy adopted by the public office under division (E)(1) of this section to the employee of the public office who is the records custodian or records manager or otherwise has custody of the records of that office. The public office shall require that employee to acknowledge receipt of the copy of the public records policy. The public office shall create a poster that describes its public records policy and shall post the poster in a conspicuous place in the public office and in all locations where the public office has branch offices. The public office may post its public records policy on the internet web site of the public office if the public office maintains an internet web site. A public office that has established a manual or handbook of its general policies and procedures for all employees of the public office shall include the public records policy of the public office in the manual or handbook.

(F)(1) The bureau of motor vehicles may adopt rules pursuant to Chapter 119. of the Revised Code to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year. The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the bureau, plus special extraction costs, plus ten per cent. The bureau may charge for expenses for redacting information, the release of which is prohibited by law.

(2) As used in division (F)(1) of this section:

(a) "Actual cost" means the cost of depleted supplies, records storage media costs, actual mailing and alternative delivery costs, or other transmitting costs, and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services.

(b) "Bulk commercial special extraction request" means a request for copies of a record for information in a format other than the format already available, or information that cannot be extracted without examination of all items in a records series, class of records, or data base by a person who intends to use or forward the copies for surveys, marketing, solicitation, or resale for commercial purposes. "Bulk

commercial special extraction request” does not include a request by a person who gives assurance to the bureau that the person making the request does not intend to use or forward the requested copies for surveys, marketing, solicitation, or resale for commercial purposes.

(c) “Commercial” means profit-seeking production, buying, or selling of any good, service, or other product.

(d) “Special extraction costs” means the cost of the time spent by the lowest paid employee competent to perform the task, the actual amount paid to outside private contractors employed by the bureau, or the actual cost incurred to create computer programs to make the special extraction. “Special extraction costs” include any charges paid to a public agency for computer or records services.

(3) For purposes of divisions (F)(1) and (2) of this section, “surveys, marketing, solicitation, or resale for commercial purposes” shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

Amended by 129th General Assembly File No. 28, HB 153, § 101.01, eff. 9/29/2011.

Amended by 129th General Assembly File No. 43, HB 64, § 1, eff. 10/17/2011.

Amended by 128th General Assembly File No. 9, HB 1, § 101.01, eff. 10/16/2009.

Effective Date: 02-12-2004; 04-27-2005; 07-01-2005; 10-29-2005; 03-30-2007; 2006 HB9 09-29-2007; 2008 HB214 05-14-2008; 2008 SB248 04-07-2009

This section is set out twice. See also § [149.43](#), effective until 10/17/2011.

Attachment G - 49 CFR Part 26



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49 CFR Part 26 as amended January 28, 2011



Attachment H - Sample Bidders List