



Capital Area Transit System

Disadvantaged Business Enterprise Program (DBE)

Pursuant to Title 49, CFR Part 26

Capital Area Transit System (CATS) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination programs and activities receiving federal financial assistance. CATS does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment of all CATS' programs and hiring and employment practices.

This program replaces all previously issued CATS regulations and procedures which refer to and/or affect Disadvantaged Business Enterprise matters within CATS operations and activities.

April 2023

DBE Policy Statement

The Capital Area Transit System (CATS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with US Department of Transportation (DOT) 49 CFR Part 26. CATS receives federal financial assistance from DOT and, as a condition of receiving this assistance, CATS has signed an assurance that it will comply with 49 CFR Part 26.

It is CATS' policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

It is also CATS policy to:

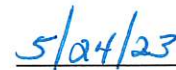
1. Ensure non-discrimination in the award and administration of DOT-transit assisted contracts.
2. Created a level playing field on which DBEs can compete fairly for DOT-transit assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities.
7. Assist the development of firms that can successfully compete in the marketplace outside the DBE program.

The Compliance Manager is the designated DBE Liaison Officer. In that capacity, the Compliance Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by CATS in its financial assistance agreements with DOT.

CATS has given this policy statement to the CATS Board of Commissioners and appropriate CATS staff. This has been distributed to the DBE and non-DBE business communities that perform work for CATS on DOT-assisted contracts. The policy statement will be posted on the CATS website: www.brcats.com



Dwana Williams
Chief Executive Officer
Capital Area Transit System



Date

1 General Requirements

1.1 Objectives

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

1.1.1 Applicability

CATS is the recipient of federal transit funds from DOT-FTA (Federal Transit Administration), authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by federal transit laws in Title 49, USC, or Titles I, II, and V of the TEA-21, Pub. L. 105-178. As a condition of receiving this federal funding, CATS is legally required to establish and maintain a DBE program in compliance with Title 49 CFR Part 26.

Goals for inclusion of socially and economically disadvantaged businesses are established by CATS for DOT-assisted contracts in accordance with the goals setting methodology set forth in 49 CFR Part 26. These goals are designed to “level the playing field” for DBEs and mandate the amount of DBE participation that can realistically be expected in the absence of discrimination.

1.1.2 Non-Discrimination Requirements

CATS 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 based on race, color, sex, or national origin.

In administering the DBE program, CATS will not, directly or indirectly use criteria or methods of that negatively impact the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

1.2 Record Keeping Requirements

CATS will report DBE participation to FTA on a semi-annual basis using the Uniform Report of DBE Awards or Commitments and Payments Form located at 49 CFR Part 26, Appendix B.

The DBE Liaison Officer (DBELO) will coordinate with Procurement and Finance staff monthly to collect information necessary to complete the Uniform Reports.

1. **Section A:** Awards and Commitments Made During This Period. Procurement will provide to the DBELO a list of FTA-assisted awards made during the previous calendar month including the FTA portion of the awards for both prime contracts and subcontractors.
2. **Section B:** Breakdown of Ethnicity and Gender of Contracts Awarded to DBEs. The DBE participation during the reporting period will be broken down by ethnicity and gender-both the number of contracts and the federal amounts of the awards. The

breakdown by ethnicity and gender will be obtained from Procurement and the appropriate Project Manager(s) from the information submitted by the prime contractors that was submitted with the bids/proposals.

3. **Section C:** Payments on Ongoing Contracts. The Federal share of payments made during the period on currently active contracts will be obtained from Project Manager(s) and Finance and verified by the DBELO in coordination with the Grants Manager.
4. **Section D:** Actual Payments on Contracts Completed During This Reporting Period. The entire Federal share of contracts that are closed during the reporting period will be obtained from Project Manager(s) and Finance.

1.3 Bidders List

CATS will create and maintain a bidders list of DBE and non-DBE contractors and subcontractors who seek to work on DOT-assisted contracts. The bidders list, also known as the Vendor Data Profile and will include, at a minimum, name, address, DBE status, age of firm and annual gross receipts. A copy of the vendor profile form is in Attachment 1.

1.4 Federal Financial Assistance Agreement

CATS has signed a federal financial assistance agreement and contract assurances, applicable to all DOT-assisted contracts and the administration thereof.

CATS will ensure that the following clauses are placed in every DOT-assisted contract and subcontract:

“CATS shall not discriminate based on 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. CATS shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

CATS’ DBE Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to CATS of its failure to carry out its approved program, DOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter to enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 *et seq.*)”

“The contractor, sub-recipient, or subcontractor shall not discriminate based on 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 the contract or such other remedy as the recipient deems appropriate. This may include, but not necessarily be limited to:

1. Withholding monthly progress payments,
2. Assessing sanctions,
3. Liquidated damages and/or

4. Disqualifying the contractor from future bidding as non-responsible.”

2 Administrative Requirements

2.1 DBE Program Updates

Because CATS uses \$250,000 or more in federal funds annually for contracting opportunities in its planning, capital, and operating programs, this program will continue until such time the funding ends.

The agency is not eligible to receive funding from DOT until the DBE program has been approved. While in compliance with the program, regular updates are not required; however, any significant changes will be reported for approval.

2.2 DBE Liaison Officer (DBELO)

The designated DBELO is:

Tommy Cating
Compliance Manager
Capital Area Transit System
2250 Florida Boulevard
Baton Rouge, LA 70802
225.346.3267
tcating@brcats.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that CATS complies with all the provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chief Executive Officer concerning DBE matters. An organization chart showing the DBELO's position is found in Appendix 3 of this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate staff members and external stakeholders and groups.

The duties and responsibilities include, but are not necessarily limited to:

1. Compiles and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in the solicitations (both race-neutral methods and contract specific goals).
6. Analyzes CATS' progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievements.

9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs in community organizations to advise them of opportunities.
12. Ensures the agency's directory on DBEs is maintained on CATS' website.

2.3 Financial Institutions

It is CATS' policy to review services offered by financial institutions owned by socially and economically disadvantaged individuals and make reasonable efforts to utilize these businesses and encourage prime contractors on DOT-assisted contracts to do the same.

The following institution, in the Baton Rouge region, has been identified as meeting the criteria: Liberty Bank and Trust Company.

Information on availability of such institutions can be obtained from the DBELO or through the Federal Deposit Insurance Corporation (FDIC) Minority Depository Institutions [Program](#).

2.4 Prompt Payment Mechanisms

CATS will include the following clauses in each DOT-assisted prime contract:

1. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days after the receipt of each payment the prime contractor receives from CATS. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of CATS. The clause applies to both DBE and non-DBE subcontracts.
2. If this contract provides for retainage, CATS will make partial payments of retainage amounts for distinct portions of the work that has been satisfactorily completed. The contractor must then remit to each first-tier subcontractor its share of any retainage within thirty (30) days after receipt of such retainage from CATS and each tier of subcontractors must likewise remind retainage to the next lower tier of subcontractors within thirty (30) calendar days after receiving payment. If this contract does not provide for retainage, then neither contractor nor any subcontractors may withhold retainage from a subcontractor. Retainage must be reported to CATS as part of the contractor's invoice. The contractor agrees to include these assurances in all subcontracts and require its subcontractors to include these assurances in their subcontracts.

Failure to perform in accordance with this section may result in specific remedies, including, but not limited to, partial and full suspension of payment and/or progress payments.

2.5 DBE Directory

CATS is a non-certifying member of Louisiana's Unified Certification Program (UCP). CATS utilizes the UCP DBE directory which is maintained by Louisiana Department of Transportation

(DOTD). This directory identifies all firms which have met the criteria for the DBE program. The UCP DBE is revised and continually updated by DOTD and can be accessed [here](#). This link is also available on CATS website.

2.6 Over-concentration

CATS will continue to review and monitor DBE participation and statistical reports by close of each Federal Fiscal Year (FFY) to determine whether there is an overconcentration of DBEs. DBE participation will be tracked by North American Industry Classification System (NAICS Codes). If there is a determination that DBE firms are over-concentrated in certain types of work which hinders the opportunity of non-DBE firms to participate in the specific type of work, CATS will consider appropriate measures to address the over-concentration.

2.7 Business Development Program

CATS has not established a business development program.

2.7.1 Monitoring and Enforcement Mechanisms

The following monitoring and enforcement mechanisms to ensure compliance are in place:

1. CATS will inform DOT of any false, fraudulent, or dishonest conduct in connection with the program, so DOT may take the necessary steps to investigate and/or penalize violators. CATS will refer instances of suspected fraud, misrepresentation and/or misappropriation of funds, theft of services, and other activities to the appropriate agency(ies).
2. CATS will monitor and enforce mechanisms to ensure compliance with 49 CFR Part 26. Failure to comply with DBE requirements of the contract or failure to use DBEs as stated in the bid/proposal constitutes a material breach of contract. The DBELO shall have the discretion to recommend to CATS' Purchasing Department that suitable sanctions be applied to the contractor if the contractor is found to be in non-compliance with these requirements. Such sanctions include, but are not necessarily limited to, withholding payment(s) until correction action(s) is taken, suspension and/or termination of the contract, in whole or in part, and debarring/suspending the contractor from entering future contracts with CATS. Individual citizens aware of these violations by any company may report such incidents directly to the DBELO.
3. CATS will also provide a monitoring and enforcement mechanism to ensure that work committed to DBEs, at the award of the contract, is performed by the DBEs. This will be accomplished through:
 - a. Executed Subcontract Agreement. When a contract award is made by CATS, the prime contractor is mailed a copy of the fully executed contract. At this time, the DBE subcontractors will be informed, in writing, that they have been named as subcontractor on the contract. Upon notification to the prime contractor, the prime contractor is required to execute subcontractor agreements or purchase orders within ten (10) calendar days prior to the start of work with the DBE subcontractors identified in the bid/proposal. These subcontractor agreements will be reviewed by the DBELO, or designee, to ensure that proper non-

discrimination, prompt payment, and retainage clauses are outlined in these agreements.

- b. Kick-off Meeting. The DBELO, or designee, shall attend a kick-off meeting to inform the contractor of the DBE requirements and other matters. If a kick-off meeting is not scheduled, the prime contractor will be notified in writing of the DBE requirements. The contractor shall be responsible for informing the subcontractors of all DBE requirements as specified by CATS.
 - c. Performance Monitoring. Periodic site inspections and interviews with DBEs that are engaged in contracts work will be conducted. A DBE Compliance Review Checklist (Attachment 3) for each active DBE contract will be done and official written certification that all contracting records and monitored work sites have been evaluated.
4. CATS will keep a running tally of actual payments made to DBE firms for work committed to them at the time of contract award. With each application for payment, the contractor must submit monthly reports summarizing DBE activity and payments. These required reports will show, for each DBE, the contract amount, the amount paid to the DBE and total amount paid to date.

2.7.2 Fostering Small Business Participation

CATS will ensure that it structures contracting requirements to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to participation, including unnecessary and unjustified bundling of contract requirements which may preclude small business participate in procurements as prime contractors or subcontractors. CATS will implement program elements to foster small business participation. CATS will reach out to local and regional partners to provide technical assistance, classroom training, and monitoring opportunities to small and disadvantaged businesses.

2.7.3 Goals, Good Faith Efforts and Counting

2.7.3.3 Set-Asides or Quotas

CATS does not use quotas in the administration of the DBE program.

3 Goals, Good Faith Efforts and Counting

3.1 Overall Goals

Every attempt is made to establish realistic and achievable DBE goals. In accordance with Section 26.45(f), CATS will submit its overall three-year DBE goals to FTA by August 1 in each third year, as required.

In establishing the overall goal every three (3) years, outreach will be done with local and regional minority groups, women, general contractor groups, community organizations, and other groups to gather information regarding disadvantage and non-disadvantaged businesses.

This will allow CATS to ensure that opportunities for DBE/WBE businesses are the same as for non-DBE businesses.

CATS will publish a notice of the proposed overall goals on the CATS website containing the goal and the rationale in determining the goal. This notice, which shall include appropriate contact information for comments and questions, will be distributed to appropriate businesses and organizations and allow for public comment during business hours.

At the beginning of the federal fiscal year, the DBELO will establish a schedule for gathering the information needed to complete the goal calculation. All necessary information will be collected by April 30 for the submission on October 1.

The collection information will include:

1. A list of anticipated contracting opportunities for the goal period. This includes opportunities that might have subcontracting opportunities.
2. The amount of Federal dollars anticipated for each contracting and subcontracting opportunity.
3. Identification of North American Industrial Classification System (NAICS) codes that is relevant to each contracting/subcontracting opportunity.
4. The number of all available firms in the CATS' market area for each NAICS code identified.
5. The number of certified DBE firms available in the CATS market area for each NAICS code identified.

Once all the necessary information has been collected, the DBELO and staff will run the goal calculations to develop the overall adjusted DBE goal by June 1. The DBE goal will be established in accordance with the 2-step process specified in 49 CFR Part 26.45.

1. The first step is to determine the relative availability of DBEs in the market area and what the "base figure" for the NAICS codes CATS will be using in future contracting opportunities. CATS will also use the LUC program DBE directory to identify all certified DBEs available to help determine the base figure.
2. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects the best DBE participation the recipient would expect in absence of discrimination based on past participation. To compute step 2, the forecasted dollars are like the previous three years of DOT-assisted spending. If they are similar, CATS will use the median attainment from the past to adjust the base figure. To adjust the base figure, CATS will average the base figure and the median attainment from the past three years. If they are not similar, CATS will review previous contracts similar in size and scope to analyze whether the base figure is consistent with previous attainments.

When establishing or revising its agency DBE goals, CATS will:

1. Consult with minority, women and general contractor groups, community organizations, and other officials and organizations.
2. Publish (in general circulation and minority-focused media/trade publications) a notice announcing the overall goal and that the goal and description of the methodology used to establish it is available for inspection on CATS website. The public will be advised that

it can submit comments on goals to CATS or FTA within thirty (30) days of the date of publication.

3. This information will be made available on the CATS website. The notice will include the contact information for the CATS DBELO and the location where the program goals can be reviewed and where comments can be sent.

CATS' overall goal submission to DOT will including a summary of information and comments received during the public participation process. The public comment will not extend past the August 1st deadline.

CATS will begin using the new overall goal on October 1 of the following federal fiscal year, unless instructed otherwise by FTA. If CATS establishes a goal on a project basis, such goal will be used by the time of the first solicitation for the Federally assisted contract for that project. CATS' goal will remain effective for the duration of the three (3) year period established and approved by FTA, absent of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

3.2 Failure to Meet Overall Goals

If CATS DBE goal attainment, at the end of any fiscal year, is less than the overall goals for that fiscal year, the agency will:

1. Analyze, in detail, the reason(s) for failing to meet the goal.
2. Develop a plan for the new fiscal year which includes specific steps and milestones to correct the deficiencies and remedy goal attainment.
3. Maintain the analysis and corrective action plan (shortfall analysis) on file for a three (3) year period and available for FTA audits.

3.2.1 Transit Vehicles Exception

CATS will require each transit vehicle manufacturer, as condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Within thirty (30) days of contract award or the issuance of a purchase order, the DBELO will ensure that the required report of the award is made to FTA's Office of Civil Rights, using the online reporting [system](#).

3.3 Meeting Overall Goals/Contract Goals

CATS will meet the maximum feasible portion of its overall goals using race neutral means to facilitate DBE participation. DBE participation that is obtained on contracts that have no specific DBE goal or where prime contractors use a strictly competitive bidding process or do not consider the DBE's status as a DBE in awarding a subcontract shall be considered race neutral. CATS will use the following measures as appropriate:

1. Increase DBE participation through community outreach and business development efforts to achieve race neutral goals.
2. To encourage and/or facilitate DBE participation, times for presentations of bids, quantities and specifications will be adjusted.

3. Un-bundle large contracts to make them more accessible to small businesses and, in some cases, require and encourage prime contractors to subcontract portions of work that they may have performed with their own employees.
4. Ensure that the updated DBE directory is maintained on CATS' website for use for prime contractors.

CATS will use contract goals to meet any portion of the overall goals that CATS is not projected to be able to meet using race-neutral means. Contract goals are established so that they will cumulatively result in meeting any portion of the overall goal that is not projected to be met using race-neutral means.

CATS will establish contract goals only on those DOT-assisted contracts that have subcontracting possibility. A contract goal will not necessarily be used on every contract and the size of the contract goal will be adapted to the type of contract (e.g. location of work, availability of DBEs to perform the particular work).

3.4 Good Faith Efforts Procedures

When a solicitation has a contract-specific DBE goal, CATS will ensure that the vendor has met the contract goal or has documented good faith efforts to meet the contract goals, if the goal is unable to be met. It is the obligation of the bidder to demonstrate the good faith efforts prior to bid submission.

3.4.1 Information To Be Submitted

CATS treats bidders/vendors' compliance with good faith effort requirements as a matter of responsiveness. In each solicitation that has a DBE goal, CATS will require the following to be submitted:

1. Names and addresses of DBE firms that will participate in the contract.
2. Description of the work that each DBE will perform. To count toward a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
3. An original DBE letter of intent from each DBE listed in the solicitation/bid. See Attachment 5 for a sample form.
4. The dollar amount of each DBE participating. The contract items or parts to be performed by each DBE should be indicated and a proposed schedule for the performance or delivery of the tasks or items.
5. Written documentation of the bidder/vendor's commitment to use a DBE subcontractor to meet the DBE goal in the proposal/bid. Written confirmation from each listed DBE firm that it is participating in the submission, along with the type and amount of work to be provided.
6. If the contract goal is not met, the prime contractor will submit written evidence of good faith efforts to secure appropriate DBE firm(s) for the work within three (3) days of the due date of the bid/offer. This includes a signed DBE Good Faith Efforts Checklist that is provided by CATS (see Attachment 4).

7. CATS DBELO, along with CATS staff, is responsible for determining whether the bidder/vendor, who has not met the contract goal, has provided sufficient explanation regarding the good faith efforts. CATS' evaluation of good faith efforts will be conducted in accordance with Appendix A to Part 26-*Guidance Concerning Good Faith Efforts*.

CATS will ensure that all information is accurate and complete and documents the bidder/vendor's good faith efforts before contract award.

3.4.2 Evaluation of Good Faith Efforts

1. For all contracts with DBE goals were established, CATS will inform all companies that submitted a proposal/bid that a good faith effort will be required with the final proposal/bid. Good faith efforts will be shown by documenting DBE participation to meet the goal or documenting good faith efforts.
2. On all Invitation To Bid or Request for Proposals, meeting DBE goals/documenting good faith efforts will be an element of responsiveness.
3. In addition to the information required in the above section, the bidders must provide the following:
 - a. The dollar amount that each DBE firm will receive.
 - b. Written confirmation from the DBE that it is participating in the contract as the prime contractor has indicated.

If insufficient DBE participation is submitted to meet the DBE contract goal, the bidder/vendor must document their good faith efforts. This submission must be on company letterhead and signed by a President, Vice-President or an employee authorized by corporate resolution or by-laws. CATS will ensure that all information is complete, accurate and documents the bidder's/vendor's good faith efforts before contract award.

3.4.3 Administrative Reconsideration

Within five (5) days of being informed by CATS that it is not responsive, a bidder/vendor may request administrative reconsideration. Bidder/vendors must make this request in writing to the following reconsideration official:

Reconsideration Officer-
Cheri L. Soileau
Capital Area Transit System (CATS)
2250 Florida Boulevard
Baton Rouge, LA 70802
469-964-2015
csoileau@brcats.com

The reconsideration official will not have participated in the original determination that the bidder/vendor did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/vendor will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goals or made a good faith effort. The bidder/vendor will have the opportunity to meet in person with the reconsideration officer to discuss the issue. The bidder/vendor will be sent a written decision on reconsideration, explaining the basis for finding that the bidder/vendor did or did not meet the goal or make adequate good faith efforts. The result is not administratively appealable to DOT.

3.5 Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Goals

CATS will include the following statement in each contract where there are goals:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed, unless the contractor obtains CATS' written consent, as provided in this paragraph and that, unless our consent is provided, the contractor shall not be entitled to any payment for work or material unless performed/supplied by the listed DBE(s).

Upon request, the contractor shall provide a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor/materials, along with lower-tier subcontractors follow these provisions. CATS will require the prime contractor to obtain approval to substitute the DBE, in case of termination, and provide copies of the new or amended agreements and/or evidence of good faith efforts, if the DBE cannot be replaced.

DBEs cannot be terminated without CATS' prior written consent. This includes, but not limited to, times in which a prime contractor seeks to perform work originally designated for a DBE subcontractor or those of an affiliate, a non-DBE firm or with another DBE firm.

CATS will provide written consent if there is sufficient cause to terminate the DBE contractor. Good cause includes, but it not limited to, the following:

1. Listed DBE subcontractor fails or refused to execute a written contract.
2. The listed DBE subcontractor fails or refuses to perform the work of the subcontract in a way that it is consistent with normal industry standards.
3. Good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work results from bad faith or discriminatory action(s) of the prime contractor.
4. The DBE subcontractor fails or refuses to meet the prime contractors reasonable, non-discriminatory bond requirements.
5. The DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
6. The DBE subcontractor is ineligible to work on public works projects because of a suspension or disbarment, pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law.
7. CATS has determined that the DBE subcontractor is not a responsible contractor.
8. The DBE subcontractor voluntarily withdraws from the project, with written notice.
9. The DBE subcontractor is ineligible to receive DBE credit for the type of work required.
10. A DBE owner dies or becomes disabled, thus rendering the DBE subcontractor unable to complete the work on the contract.

11. Other good cause that is determined by CATS to terminate the DBE subcontractor. The prime contractor cannot terminate a DBE subcontractor in order for the prime contractor to do the work, substitute a non-DBE subcontractor or another DBE subcontractor.

The prime contractor must provide, in writing, of the intent to terminate the DBE subcontractor and list all reasons for the termination. The prime contractor must give the DBE subcontractor five (5) days to respond to the prime contractor's notice to terminate and list any reason(s) why the request to terminate/substitute should not be approved by CATS. If there is a particular case, such as public necessity (e.g. safety), CATS may provide a response period of less than five (5) days.

In addition to post-award terminations, the provision of this section applies to pre-award deletions or substitutions for DBE firms submitted by vendors in negotiated procurements.

As remedies for non-compliance to these administrative remedies, CATS will require a contractor to make a good faith effort to replace a DBE that has been terminated or failed to complete its work on a contract with another certified DBE. These good faith efforts will include assurance that the replacement DBE meet the stated DBE goal in the contract and will be documented by the prime contractor. The prime contractor will have seven (7) days to provide documentation, if requested by CATS. An extension of an additional seven (7) days may be given if the prime contractor requests it, in writing.

The contract clause in 26.13(b) will be included in every contract. This states that if the prime contractor fails to carry out the requirements of this part, it is then a material breach of the contract and the contract may be terminated or other remedies, as set forth by law, may be taken.

If the prime contractor fails or refuses to comply, within the time specified, CATS will issue a stop order, stopping all or part of the payments until satisfactory action has been taken. If the prime contractor still fails or refuses to comply, the contract can then be terminated.

3.6 Counting DBE Participation

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

3.7 Commercially Useful Function

All DBE contractors, whether prime or sub, must perform a Commercially Useful Function (CUF). A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out their responsibilities by performing, managing, and supervising the work. To perform a CUF, the DBE must also be responsible with materials and supplies, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material. To determine whether a DBE is performing a CUF, the amount of work subcontracted, industry practices, the amount paid is commensurate with the work, and the DBE credit claimed must be calculated.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation. If a DBE does not perform at least thirty (30) percent of the total cost of the contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected based on normal industry practice, CATS will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a CUF, the DBE may present evidence in writing to rebut this presumption. CATS may determine that the firm is performing a CUF given the type of work involved and normal industry practices. CATS' decision(s) on CUF are not administratively appealable.

3.8 Counting Guidelines

The guidelines are as follows:

1. DBE as a Prime Contractor. 100% DBE credit for that portion of work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE-prime subcontractors to a non-DBE firm does not count toward the DBE goal.
2. DBE as a Joint Venture. 100% of the DBE credit for that portion of the total dollar value of the contract equal to the clearly defined portion of the work performed by the DBE.
3. DBE as a Subcontractor. 100% DBE credit for the work of the subcontract performed by the DBE, including the cost of materials and supplies, excluding the purchase of materials or supplies or the lease of the equipment by the DBE subcontractor from the prime contractor or affiliates. Work that the DBE subcontractor, in turn, subcontracts to a non-DBE firm does not count toward the DBE.
4. DBE as a Material Supplier or Broker. 100% DBE credit for the cost of materials or supplies obtained from a DBE manufacturer. 60% DBE credit for the cost of materials or supplies from a DBE regular dealer. 100% DBE credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a regular dealer or manufacturer.
5. DBE as a Trucker. 100% DBE credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation. At least one truck owned, operated, licensed, and insured by the DBE must be used on the contract. Credit will be given for the full value of the all such DBE-owned trucks operated using DBE employed drivers. DBE credit for transportation services provided by a non-DBE firm will be limited to value of transportation services provided by DBE-owned trucks on the contract. Any additional participation by a non-DBE firm will receive credit only for the value of the reasonable fee or commission received by the DBE.

CATS uses the following factors in determining whether to count expenditures to a DBE trucking firm to determine CUF:

- a. DBE must be responsible for supervision and management of the entire trucking operation and there cannot be a contrived arrangement for purpose of meeting the DBE commitment.
- b. DBE must own and operate one fully licensed, insured, and operational truck used on the contract.

- c. DBE receives credit for the total value of transportation services it provides on the contract using trucks owned and driven by DBE employees.
- d. DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of transportation services the DBE lessor provides on the contract.
- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE receives credit for the total value of the transportation services provided by the non-DBE firm, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE firms receive credit only for the fee or commission it receives because of the lease arrangement. CATS will obtain written consent from FTA if it chooses this approach.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

4 Certification

4.1 Certification Process

CATS is a member of the UCP but does not certify. For more information or to apply, firms should contact:

Paula M. Roddy
DOTD Compliance Programs Director
Louisiana Department of Transportation and Development
PO Box 94245
Baton Rouge LA 70804-9245
225-379-1363

Certification Forms can be found [here](#).

4.2 Compliance and Enforcement

4.2.1 Information, Confidentiality, Cooperation and Intimidation or Retaliation

Notwithstanding any contrary provision of Federal or state law, CATS will not release any information that may reasonably be construed as confidential or proprietary information to a third part, other than DOT, without written consent of the firm that submitted the information.

All participants in the DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants, appellants, and contractors using DBE firms to meet contract goals) are required to fully cooperate with DOT and recipient compliance

reviews, certification reviews, investigations, and other requests for information. Failure to do so is cause for action against the relevant party, such as:

- Finding of noncompliance with recipients
- Denial of certification or removal of DBE firms
- Denial of certification or removal of eligibility and/or suspension or debarment.

CATS, a contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

4.3 Interstate Certification

4.3.1 An out-of-state firm seeking program certification must be currently certified as a DBE under 49 CFR Part 26.61, Subpart D, by their home state.

4.3.2 The applicant must provide the following information:

4.3.2.1 A current copy of the certification issued by the home state.

4.4 Monitoring Payments to DBEs

Prime contractors must maintain records and documentation regarding payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of CATS or LADOTD. This requirement also includes to all DBE subcontractors.

Interim audits will be performed by the appropriate CATS staff. The audits will review payments to DBE subcontractors to ensure that the actual amount paid equals or exceeds the dollar amounts statement in the schedule for DBE participation.

Appendices

1. Terms and Definitions
2. Bidder's List Form
3. Organization Chart
4. DBE Compliance Review Checklist
5. DBE Good Faith Efforts Checklist
6. Letter of Intent Form

Appendix 1: Definition of Terms

The terms used in this program follow those in 49 CFR 26.5.

Assets: All property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in bank, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern, or business enterprise: an entity organized for profit with a place of business located in the United State and which operates primarily within the United States, or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance: a recipient has correctly implemented the requirements of this part.

Contingent Liability: a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments and provisions for federal income tax.

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

Contractor: one who participates through a contract or subcontract (at any tier), in a DOT-assisted program.

Days: calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when then last day of the period is a Saturday, Sunday, or a federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT: US Department of Transportation, including the Office of the Secretary, Federal Highway Administration, Federal Transit Administration, and the Federal Aviation Administration.

Disadvantaged business enterprise (DBE): a for-profit small business concern, that:

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

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

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

Immediate family members: father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

Indian tribe: any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Corporation (ANC), which is recognized as eligible for special programs and services provided by the United States by 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.

Joint venture: 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.

Liabilities: financial or pecuniary obligations. This includes, but not limited to accounts payable, notes payable to banks or others, installment accounts, mortgages on real estate and unpaid taxes.

Noncompliance: a recipient has not correctly implemented the requirements of this part.

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

Personal Net Worth: 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: the most current North American Industry Classification System (NAICS) designation which best describes the primary business of the firm. The NAICS is described in the North American Industry Classification Manual-United States located [here](#).

Primary recipient: a recipient which receives DOT financial assistance and passes some or all on to another recipient.

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

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

Race-conscious measure or program: focused specifically on assisting only DBEs, including women-owned DBEs.

Race neutral measure or program: any small business and does not include setting specific goals for DBE participation.

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

Secretary: Secretary of Transportation or their designee

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

Small Business Administration (SBA): the United States Small Business Administration

Socially and Economically Disadvantaged Individual: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities, the social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that they have held themselves out as a member of a designated group.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "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;
 - c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (the Kingdom of Cambodia), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of

DBE Policy Statement

The Capital Area Transit System (CATS) has established a Disadvantaged Business Enterprise (DBE) program in accordance with US Department of Transportation (DOT) 49 CFR Part 26. CATS receives federal financial assistance from DOT and, as a condition of receiving this assistance, CATS has signed an assurance that it will comply with 49 CFR Part 26.

It is CATS' policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts.

It is also CATS policy to:

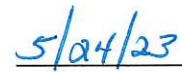
1. Ensure non-discrimination in the award and administration of DOT-transit assisted contracts.
2. Created a level playing field on which DBEs can compete fairly for DOT-transit assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities.
7. Assist the development of firms that can successfully compete in the marketplace outside the DBE program.

The Compliance Manager is the designated DBE Liaison Officer. In that capacity, the Compliance Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by CATS in its financial assistance agreements with DOT.

CATS has given this policy statement to the CATS Board of Commissioners and appropriate CATS staff. This has been distributed to the DBE and non-DBE business communities that perform work for CATS on DOT-assisted contracts. The policy statement will be posted on the CATS website: www.brcats.com



Dwana Williams
Chief Executive Officer
Capital Area Transit System



Date