

CAPITAL AREA TRANSIT SYSTEM (CATS)

DBE

Disadvantaged Business Enterprise Program
Pursuant To
Title 49, Code of Federal Regulations, Part 26

Bill Deville, CEO

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.
(Revised: February 2020)

DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY STATEMENT

Policy Statement Section 26.1, 26.23

The Capital Area Transit System (CATS) 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 Capital Area Transit System (CATS) has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Capital Area Transit System (CATS) has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of CATS to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of DOT – transit assisted contracts;
2. Create 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; and
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Compliance Officer has been delegated as the DBE Liaison Officer. In that capacity, the Compliance Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Capital Area Transit System (CATS) in its financial assistance agreements with the Department of Transportation.

Capital Area Transit System (CATS) has disseminated this policy statement to the CATS Board of Commissioners and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. This policy statement will be posted on CATS website at www.brcats.com.



Bill Deville
Chief Executive Officer
Capital Area Transit System (CATS)

Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Capital Area Transit System (CATS) is the recipient of federal transit funds from the U.S. Department of Transportation Federal Transit Administration (FTA) authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-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 of the U.S. Code of Federal Regulations, Part 26 (49 CFR Part 26).

Under this program, goals for the inclusion of socially and economically disadvantaged businesses are established by CATS for DOT-assisted contracts, in accordance with the goal 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.

Section 26.5 Definitions

CATS will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

The Capital Area Transit System (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 on the basis of race, color, sex, or national origin.

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

Section 26.11 Record Keeping Requirements

Reporting to DOT; 26:11(b)

Capital Area Transit System (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 DBELO will coordinate with CATS Procurement and Finance staff on a monthly basis 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 subcontracts.
2. Section B: Breakdown by Ethnicity & 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 CATS' project Managers from the information submitted by the prime contractors that was submitted with their 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 CATS' Project Managers and Finance, and verified by the DBELO in coordination with the Grants Manager.
4. Section D: Actual Payments on Contracts Completed This Reporting Period
The entire Federal share of contracts that are closed during the reporting period will be obtained from the CATS' Project Managers and Finance.

Bidders List: 26.11(c)

The Capital Area Transit System (CATS) will create and maintain a bidders list, consisting of information about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT assisted contracts. CATS 'bidder's list is called the Vendor Data Profile. This listing includes the firm's name, address, status as a DBE or non-DBE, age of firm and annual gross receipts.

CATS will retrieve this information through the collection of the vendor data profile forms submitted by firms wishing to do business with CATS. A copy of this form can be found in Attachment 1.

Section 26.13 Federal Financial Assistance Agreement

Capital Area Transit System (CATS) has signed the federal financial assistance agreement assurance and the contract assurance, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

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

Capital Area Transit System (CATS) 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. 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, 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 Capital Area Transit System (CATS) of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance: 26.13b

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

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the Capital Area Transit System (CATS) uses \$250,000 or more in federal funds annually for contracting opportunities in its FTA planning, capital and operating programs, we will continue to carry out this program until all funds from DOT financial assistance have been expended.

We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on page 2 of this program. The policy statement is also circulated throughout the CATS as well as the DBE and non-DBE business communities in the CATS' market area. The policy statement is also on CATS' website.

Section 26.25 DBE Liaison Officer (DBELO)

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

Pearlina Thomas, Chief Administrative Officer
Capital Area Transit System (CATS)
2250 Florida Boulevard
Baton Rouge, LA 70802
225.346.3262
pthomas@brcats.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Capital Area Transit System (CATS) complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to Bill DeVille, Chief Executive Officer, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 1 employee to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in 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 achievement.
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 and community organizations to advise them of opportunities.
12. Ensures the agency's updated directory on certified DBEs is maintained on CATS' website.

Section 26.27 DBE Financial Institutions

It is the policy of the Capital Area Transit System (CATS) 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.

To date we have identified the following such institution in Baton Rouge and the surrounding areas.

- Liberty Bank and Trust Company

Information on the availability of such institutions can be obtained from the DBE Liaison Officer as well as through the Federal Deposit Insurance Corporation (FDIC) Minority Depository Institutions Program (www.fdic.gov/regulations/resources/minority/).

Section 26.29 Prompt Payment Mechanisms

CATS will include the following clause 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 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. This 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 have 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 remit 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 Subcontractor 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 section may result in specific remedies, including but not limited to partial and full suspension of payment and/or progress payments.

Section 26.31 Directory

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

Transportation and Development (LADOTD) which identifies all firms eligible to participate as DBE's. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The UCP DBE directory is revised and continually updated by the Louisiana Department of Transportation and Development. The DBE Directory can be directly accessed at LADOTD website at:

{NEED TO VERIFY LINK}

The LADOTD DBE director can also be accessed through the CATS website at:
www.brcats.com.

Section 26.33 Over-concentration

CATS will continue to review and monitor DBE Participation and statistical reports by the close of each Federal Fiscal Year in order to determine whether there is an overconcentration of DBEs. DBE participation on federally funded contracts will continue to be tracked by NAICS Codes. CATS determines that DBE firms are over concentrated in certain types of work as to unduly burden the opportunity of the non-DBE Firms to participate in this type of work, CATS will consider appropriate measure to address over-concentration.

Section 26.35 Business Development Programs

CATS has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

CATS will take the following monitoring and enforcement mechanisms to ensure compliance with 49CFR Part 26.

1. CATS 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. CATS will also make referrals to other appropriate authorities in instances of suspected fraud, misrepresentation and misappropriation of funds, theft of services, and other activities that warrant criminal referrals or other judicial action.
2. CATS will monitor and enforce mechanisms to ensure compliance with 49 CFR Part 26. Failure to comply with the 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's Purchasing that suitable sanctions be applied to the Contractor if the Contractor is found to be in non-compliance with the DBE requirements. Such sanctions include, but are not limited to, withholding payment to the Contractor until corrective action is taken; suspension and/or termination of the contract, in whole or in part; and debarring

or suspending the Contractor from entering into future contracts with the CATS. Individual citizens aware of these violations by any company may report to CATS such incidence directly to the DBELO.

3. CATS will also provide a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs to which the work was committed. This will be accomplished through the following:
 - a. Executed Subcontract Agreements – When a contract award is made by CATS, the prime contractor is mailed a copy of the fully executed contract. At this time CATS will inform the DBE subcontractors in writing that they have been named as subcontractor on the contract. Upon notification to the prime contractor of contract award, the prime contractor is required to execute subcontractor agreements or purchase orders within 10 calendar days prior to start of work with the DBE subcontractors identified in its bid/proposal. These subcontractor agreements will be reviewed by 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 kickoff meeting to inform the contractor of the DBE Requirements and other matters, prior to or immediately after Notice to Proceed is issued. If a kickoff meeting is not scheduled, the prime contractor will be notified in writing of DBE requirements. The Contractor shall be responsible for informing the Subcontractors of all DBE Requirements as specified by CATS herein.
 - c. Performance Monitoring – Periodic site inspections and interviews with DBEs that are engaged in contracted work. We will also maintain a DBE Compliance Review Checklist (Attachment 3) for each active DBE contract which will include an official written certification that we have reviewed contracting records and monitored work sites for this purpose.
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 the total amount paid to the DBE to date.

Section 26.39 Fostering small business participation

CATS will ensure that it structures contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation,

including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. CATS will actively implement program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program. CATS will reach out to other local and regional partners in an effort to provide technical assistance, classroom training, and mentoring opportunities to small and disadvantaged businesses.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Capital Area Transit System (CATS) does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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

In establishing the overall goal every three years, CATS will conduct public participation consultation with local and regional minority, women's and general contractor groups, community organizations and other groups to gather information regarding the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs and CATS' efforts to establish a level playing field for the participation of DBEs.

Following this consultation, CATS will publish a notice of the proposed overall goal on our official internet web site informing the public that this goal and its rationale will be available for inspection during normal business hours for a comment period. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

At the beginning of the Federal fiscal year for which a goal submission is required, the DBELO will establish a schedule for gathering the information needed to complete the goal calculation, so that all necessary information will be collected by April 30. This information will include:

1. A list of the anticipated contracting opportunities for the goal period, also identifying those opportunities that have subcontracting opportunities;
2. The amount of Federal dollars anticipated for each contracting and subcontracting opportunity;
3. Identification of the North American Industrial Classification System (NAICS) codes relevant to each contracting, and 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 necessary information has been collected, the DBELO and other CATS staff will run the goal calculations in order to develop the overall adjusted DBE goal by June 1. The DBE goal will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45.

1. The first step is to determine the relative availability of DBEs in the market area, "base figure" for the NAICS codes CATS will be utilizing in its future contracting opportunities. CATS will use the Louisiana Unified Certification Program DBE directory as the method to identify all certified DBEs available to determine our base figure.
2. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in absence of discrimination based on past participation. To compute step 2, CATS will gather historical data on the forecasted contracts to analyze whether the forecasted dollars are similar to the previous three years of DOT-assisted spending. If they are similar, CATS will use the median attainment from the past three years 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 goal, CATS will:

1. Consult with minority, women's and general contractor groups, community organization, and other officials and organizations.
2. Publish (in general circulation and minority-focused media and trade publications) a notice announcing the overall goal and the fact that the goal and a 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 the 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 CATS' DBELO, and the location where the program goals can be reviewed and the address to which comments should be sent.

CATS' overall goal submission to DOT will include a summary of information and comments received during this public participation process and the responses received. The public comment will not extend 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 the FTA. If CATS establishes a goal on a project basis, such goal will be used by the time of the first solicitation for a Federally-assisted contract for that project.

CATS' goal will remain effective for the duration of the three 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.

Section 26.47 Failure to meet overall goals

If Capital Area Transit System (CATS) DBE goal attainment at the end of any fiscal year is less than the overall goal for that fiscal year, the agency will:

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

Section 26.49 Transit Vehicle Manufacturers Goals

CATS will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Within 30 days awarding a contract, or issuing a purchase order to a transit vehicle manufacturer, the DBELO will ensure that the required report of the award is made to the FTA Office of Civil Rights using the online reporting system, which can be accessed through FTA's DBE website at: www.transit.dot.gov/dbe.

Section 26.51 Meeting Overall Goals/Contract Goals

Capital Area Transit System (CATS) will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating 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 DBE participation. In addition, CATS will use the following measures as appropriate:

1. Will achieve race-neutral goals to increase DBE participation through community outreach and business development efforts.
2. Arrange solicitation, times for the presentation of bids, quantities and specifications in ways that will facilitate DBE, and other small business participation.
3. Un-bundle large contracts to make them more accessible to small businesses, in some cases, requiring and always encouraging prime contractors to subcontract portions of work that they may have otherwise performed with their own workforces.
4. Ensure that the updated DBE directory is maintained on CATS' website for use by potential prime contractors.

CATS will use contract goals to meet any portion of the overall goal that CATS is not projected to be 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.)

Section 26.53 Good Faith Efforts Procedures

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, Capital Area Transit System (CATS) will ensure the contractor has met the contract goal or has documented good faith efforts to meet the contract goal, if unable to meet the goal. It is the obligation of the bidder to demonstrate it will make sufficient good faith efforts prior to submission of its bid.

Information to be submitted: 26.53(b)

Capital Area Transit System treats bidder/offeree's compliance with good faith efforts requirements as a matter of responsiveness.

In each solicitation for which a contract goal has been established, CATS will require the following information to be submitted:

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. To count toward meeting 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 participation schedule. A copy of this form can be found as Attachment 5.
4. The dollar amount of the participation of each DBE firm participating. The contract items or parts to be performed by each DBE should be indicated, as well as a proposed timetable for the performance or delivery of the contract items.
5. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal and written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
6. If the contract goal is not met, written evidence of good faith efforts to secure a DBE subcontractor will be required to be submitted to CATS within three business days of the due date of the bid or offer. This documentation will include a signed DBE Good Faith Efforts Checklist (form provided by CATS) – Attachment 4 and the supporting documentation that the bidder/offeree made a good faith effort to meet the goal.

7. Capital Area Transit System DBELO, in collaboration with CATS staff, is responsible for determining, whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. CATS' evaluation of good faith efforts will be conducted in accordance with Appendix A to Part 26 – Guidance Concerning Good Faith Efforts.

Capital Area Transit System (CATS) will ensure that all information is complete and accurate and adequately documents the bidders/offeror's good faith efforts before CATS commits to the performance of the contract by the bidder/offeror.

Evaluation of Good Faith Efforts: 26.53 (a) & (c)

1. For all contracts in which contract DBE goals are established, CATS will inform competitors in the solicitation that all bidders/proposers will be required to show good faith efforts to meet the DBE goal with their bid/proposer documents. Good faith efforts will be shown by documenting enough DBE participation to meet the goal or documenting adequate good faith efforts to meet the goal or a combination of the two. Award of the contract will be conditioned upon the bid/proposers documenting good faith efforts to meet the DBE goals on the contracts.
2. On all invitations for bids, meeting the DBE goal/documenting good faith efforts will be an element of responsiveness. On all requests for proposals and letters of interest and qualifications, meeting the DBE goal/documenting good faith efforts will be an element of responsibility.
3. All bids and proposals must contain the following:
 - a. The name and addresses of the DBE subcontractors that will participate in the contract;
 - b. A description of the work that each DBE will perform;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidders/proposers commitment to use the DBE subcontractors whose participation it submits to meet a contract goal or otherwise
 - e. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment.

If insufficient DBE participation is submitted to meet the DBE contract goal, bidders/proposers must document their good faith efforts to meet the goal at the time of submitting their bid or proposal. This submission should be submitted on company letterhead and signed by a President, Vice President, or other employee authorized by corporate resolution or bylaw to bind the

company. CATS will ensure that all information is complete, accurate, and adequately documents the bidder's and or proposer's good faith efforts before CATS awards the contract.

Administrative Reconsideration: 26.53(d)

Within 5 days of being informed by CATS that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Pearlina Thomas, Chief Administrative Officer
Capital Area Transit System (CATS)
2250 Florida Boulevard
Baton Rouge, LA 70802
225.346.3262
pthomas@brcats.com

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

Capital Area Transit System (CATS) will include in each prime contract where there are contract goals a provision stating: *"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 26.53(f) and that unless our consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE."*

CATS will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

In this situation, CATS will require the prime contractor to obtain CATS' prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

CATS will require that a prime contractor not terminate a DBE subcontractor without CATS' prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

CATs will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. We have determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that a good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

As remedies for noncompliance to these administrative remedies, CATS 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

Section 26.55 Counting DBE Participation

Capital Area Transit System (CATS) will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55

Commercially Useful Function

DBE primes and subcontractors, at any tier, must perform a Commercially Useful Function (CUF). A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. If a DBE does not perform or exercise responsibility for at

least 30 per cent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, CATS will presume that the DBE is not performing a commercially useful function

When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence in writing to rebut this presumption. CATS may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. CATS decisions on commercially useful function are not administratively appealable.

Counting guidelines are provided as follows:

DBE as the Prime Contractor: 100% DBE credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE prime subcontracts to a non-DBE firm does not count toward the DBE goal.

DBE as a Joint Venture Contractor: 100% DBE credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.

DBE as a Subcontractor: 100% DBE credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the prime contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE firm does not count toward the DBE.

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 the materials or supplies purchased 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

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 for which it is responsible. 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 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 the 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 six (6) factors in determining whether to count expenditures to a DBE trucking firm, to determine if it is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract and there cannot be a contrived arrangement for the purpose of meeting the DBE commitment.
2. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner- operator who is certified as a DBE. The DBE who leases the trucks from another DBE receives credit for the total value of the transportation services the DBE lessor provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner- operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of 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 as a result of the lease arrangement. CATS will obtain written consent from FTA if it chooses this approach.

For purposes of the section above, 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.

SUBPARTS D & E– CERTIFICATION

Section 26.61 – 26.73 Certification Process

Capital Area Transit System (CATS) is a member of the Unified Certification Program but does not certify.

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

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

Certification forms are located on DOTD's website at http://wwwsp.dotd.la.gov/Inside_LaDOTD/Divisions/Administration/Compliance/Pages/DBE_Certification.aspx

Section 26.81 Unified Certification Programs

Capital Area Transit System (CATS) is the member of a Unified Certification Program (UCP) administered by Louisiana Department of Transportation and Development.

The UCP meets all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Notwithstanding any contrary provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to a third party (other than DOT) without the 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 and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

CATS, 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. If we violate this prohibition, we are in noncompliance with this part.

Monitoring Payments to DBE

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

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

ATTACHMENTS

- 1. Bidder's List Form**
- 2. Organization Chart**
- 3. DBE Compliance Review Checklist**
- 4. DBE Good Faith Efforts Checklist**
- 5. Letter of Intent Form**

Attachment 1. CATS Vendor Profile Data Form
Capital Area Transit System
2250 Florida Blvd – Baton Rouge, LA 70802
Complete and return via email to: procurement@brcats.com
For Questions Call: 225-346-5552

SECTION I

CATS BUSINESS PROFILE DATA FORM			
1		Company Name	
2		Mailing Address	
3		Contact Person & Title	
4		Telephone & Fax Number	
5		Cell Phone No. & Email Address	
6		Business Structure	Check all applicable items
	a	Corporation	
	b	Partnership or LLC (identify)	
	c	Certified Disadvantaged Business Enterprise	Certified DBE's should complete Section II below
	d	Sole Proprietor	
	e	Other (identify)	
7		Type of Business	Check all applicable items
	a	Maintenance or Construction	
	b	Technical or Professional Services	
	c	Mfg. / Wholesale / Retail Sales	
	c	Other Services (identify)	
	e	Brief Description of Goods or Services	
8	List Registration(s) and/or License(s) information below		
Yes	No	Business Registration(s) or License(s)	List Registration(s), License # or N/A
	a	Federal Employee ID No (EIN) or Soc Sec No.	
	b	Louisiana State Sales Tax Number	
	c	Louisiana State Contractors Number	
	c	East Baton Rouge Occupational License	
	e	East Baton Rouge Sales Tax Number	
	f	Other: Business License(s) – identify	
	g	Other: Business License(s) – identify	

NOTE: Vendor must have a Federal EIN or provide social security number to be an eligible vendor.

9	Date Business was established	
10	Number of Full Time / or part-time Employees	
11	Are your or any members of your firm or close relatives employed by CATS? (yes or no)	
If yes, list Names, Relationship to you or your firm and Department at CATS where employed		
	Name(s)	Relationship
		CATS Dept Name

SECTION II

Annual Gross Receipts Over the last three years (Check one)	
<input type="checkbox"/>	Less than \$500K
<input type="checkbox"/>	\$500K - \$1 million
<input type="checkbox"/>	\$1 – 2 million
<input type="checkbox"/>	\$2 – 5 million
<input type="checkbox"/>	Greater than \$5 million

Attachment 2 – CATS Organizational Chart

{INSERT UPDATED ORG CHART}

Attachment 3 - DBE Compliance Review Checklist
Capital Area Transit System
2250 Florida Blvd – Baton Rouge, LA 70802

Contract Number: _____
Award Date: _____ **Expiration Date:** _____
DBE Firm: _____
DBE Contact: _____ **Phone:** _____
Email: _____

DBE Goal: _____ **Actual DBE Percent**
Attained _____

Date of Inspection: _____

Documents Reviewed:	Comments after Review
Contractor Monthly Report of DBE Participation	
DBE Subcontractor Monthly Report	
Payment Verification Forms	
If applicable	
Completed Termination/Substitution Request Form	
Copy of written notice of intent to request termination/substitution	
Good Faith Efforts statement	

OFFICIAL WRITTEN CERTIFICATION OF MONITORING

In accordance with 49 CFR 26.37, I, _____, hereby certify that the contracting records for the above referenced contract have been reviewed and the work sites in this state have been visited/monitored to ensure that the work committed to the DBE at contract award or subsequently was actually performed by the DBE to which the work was committed.

Signature: _____ **Date:** _____

Attachment 4 - Determination of Good Faith Efforts
Capital Area Transit System
2250 Florida Blvd – Baton Rouge, LA 70802

The undersigned bidder/offer has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offer (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offer's firm: _____

Signature: _____ Title _____

Date: _____

Attachment 5 - Letter of Intent Form
Capital Area Transit System
2250 Florida Blvd – Baton Rouge, LA 70802

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone number: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above.
The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____ Date _____

Title _____

If the bidder/offer does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

Submit this page for each DBE subcontractor.