

Community Action Committee of Pike County
Community Action Transit System
FFY 2009 DBE Program

Submitted: April 21, 2009

Objectives

The Community Action Committee of Pike County (CAC), Community Action 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. **CAC, CATS** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, **CAC, CATS** has signed an assurance that it will comply with 49 CFR Part 26.

Policy Statement

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBE's can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBE's;
5. To help remove barriers to the participation of DBE's in DOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.
7. CAC, CATS will not use quotas in the administration of the CAC, CATS DBE Program.

The **Transit Program Director** has been delegated as the DBE Liaison Officer for the CAC, CATS. In that capacity, the **Transit Program Director** is responsible for implementing all aspects of the DBE program for the **CAC, CATS**. Implementation of the DBE program is accorded the

same priority as compliance with all other legal obligations incurred by the **CAC, CATS** in its financial assistance agreements with the **Department of Transportation**.

The **CAC, CATS** has disseminated this policy statement to the CAC Governing Board and all the components of the CAC, CATS organization. This statement will be made available to DBE and non-DBE business communities that perform work for CAC, CATS on DOT-assisted contracts. The statement will be available on the CAC, CATS website at www.pikecac.org and will be mailed upon written or verbal request.

See CAC Policy #05.09.00.01 Adopted 6/18/2009 by the Community Action Committee of Pike County Governing Board.

Non-discrimination

The **CAC, 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 **CAC, 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. **CAC, CATS** will continue to carry out this program until all funds from DOT financial assistance have been expended. **CAC, CATS** will provide to DOT updates representing significant changes in the program.

The CAC, CATS will not use quotas in any way in the administration of this DBE program.

The following individual has been designated as the DBE Liaison Officer (DBELO): **The Transit Program Director** for the **CAC, CATS, 941 Market Street, Waverly, (740) 289-2371**. In that capacity, the **DBELO** is responsible for implementing all aspects of the DBE program and ensuring that the **CAC, CATS** complies with all provisions of 49 CFR Part 26. The DBELO has access to FTA Circulars, media access, direct access to federal, state and city agencies, and staff support of at least (1), but up the entire staff of the office of Transit. An **organization chart** displaying the DBELO's position for the **CAC, CATS** in the organization is found in the Community Action Committee of Pike County Policy and Procedure Manual, Procedure #03.02.01.00.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.

3. Works within CAC, CATS to set overall annual goals.
4. Ensures that public notices are published, and that all materials are available for review at the public hearings.
5. Advises and helps identify contract specific goals, and makes sure that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) that are procured through the CAC, CATS and monitors results.
6. Analyzes CAC, CATS progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Plans and participates in DBE training seminars.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the CAC, CATS updated directory on certified DBEs.

Federal Financial Assistance Agreement Assurance

The CAC, CATS has signed the following assurance, and has the assurance on file, applicable to all DOT-assisted contracts and their administration:

The CAC, 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. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by

reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **CAC, CATS** of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 186 (31 U.S.C. 3801 et seq.).

DBE Financial Institutions

It is the policy of the **CAC, 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. The following efforts have been made to identify and use such institutions: The **Federal Reserve Board website: www.federalreserve.gov/releases/mob/min_bank_1st.txt** identifies no minority owned financial institutions in Ohio.

Directory (26.25)

The Office of Transit maintains a directory identifying all firms eligible to participate as DBE's. The directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. They revise the Directory annually. The Directory is available as follows <http://www.dot.state.oh.us/contracts/dbe.htm>. The Directory is also available to be mailed upon verbal or written request.

Over Concentration:

The **CAC, CATS** has not identified that over-concentration exists in the types of work that DBE's perform.

Required Contract Clauses

Contract Assurance

The CAC, CATS will ensure that the following clause is placed in every DOT-assisted contract and subcontract that the CAC, CATS is responsible for:

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.

Prompt Payment

The following clause in shall be included in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 45 days from the receipt of each payment the prime contractor receives from the CAC, CATS. The prime contractor agrees further to return retained payments to each subcontractor within 45 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 the CAC, CATS. This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement Mechanisms

The CAC, 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. Similar action will be considered through the CAC, CATS legal authorities, including responsibility determinations in future contracts.

Overall Goals

Amount of goal

The CAC, CATS overall goal for FY 2009 is the following: 0 % of the Federal financial assistance we will expend in DOT-assisted contracts (*exclusive of FTA funds for transit vehicle purchases*).

Method

The following is a summary of the method we used to calculate this goal:

Instructions for getting Goal Projections FFY 2009

1. Obtain federal Dollars with contracting opportunities from the CAC, CATS Transit Program Director. Also determine what types of goods and services will be used to determine the NAICS Codes to look up. CAC, CATS will purchase professional services (54), wholesale trade (42), and construction (23) plus detail breakdown of code. Based on the breakdown of federal money, the NAISC Codes are weighted as follows: professional services (54) 12%, wholesale trade (42) 4%, and construction (23) 84%.

NAICS Sector	Weighted	NAICS Sub-sector / Industry Code Description.	Industry code	Total Establishments	DBE Certified
(54) Professional, scientific & technical services	12%				0
		Architectural, Engineering, and Related Services	5413	3384	0
		Computer Systems Design and Related Services	5415	3069	0
(42) Wholesale Trade	4%				0
		Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers	4231	983	0
		Office Equipment Merchant Wholesalers	423142	343	0
(23) Construction	84%				0

Commercial and Institutional Building
Construction

23622

1459

0

The website is <http://www.census.gov/epcd/cbp/view/cbpview.html>. Select: view County, State, U.S., Zip, or MSA Database on a NAICS Basic for 2006. The above listed NAICS figures (industry codes) are listed there.

2. The total number of DBE's certified by the Ohio Department of Transportation, were located from the ODOT Website at: www.dot.state.oh.us
3. From the above website, select Contracts/DBE Services/DBE Listing website:
<ftp://ftp.dot.state.oh.us/Pub/Contracts/DBE/dbe-cert.pdf>
4. The certified DBE consultants are listed there. Pike, Ross and Scioto county figures were checked for the above listed NAISC Codes.
5. The number of vendors listed for the Professional, scientific and technical services (54), the Wholesale Trade (42), and Construction (23) was 0 for all three categories in all three counties checked.
6. $[\frac{.12(\text{professional, scientific and technical services DBE's})}{\# \text{wholesale trade firms}} + \frac{.04(\text{wholesale trade DBE's})}{\# \text{wholesale trade firms}} + \frac{.84(\text{construction DBE's})}{\# \text{construction firms}}] \times 100 = \text{step one base figure, weighted by type of work to be performed.}$
7. $[\frac{.12(0)}{6453} + \frac{.04(0)}{1326} + \frac{.84(0)}{1459}] \times 100 =$
8. $[.12(0.0) + .04(0.0) + .84(0.0)] \times 100 =$
9. $[0.0 + 0.0 + 0.0] \times 100 = 0\% \text{ Base Goal}$
10. This is the first year CAC, CATS has been a threshold recipient. Therefore, figures from previous years were not used.

Note: 100% of the goal is race neutral

Transit Vehicle Manufacturers

The CAC, CATS is a Designated Grantee for Rural Public Transit. Therefore, the **Ohio Department of Transportation** orders vehicles for CAC, CATS. The Ohio Department of Transportation requires that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on

FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. Alternatively, the **Ohio Department of Transportation, Office of Transit** may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program. The Ohio Department of Transportation, Office of Transit **will also require the TVM to submit a copy of its approved or not disapproved annual overall percentage DBE goal with bid submittal or bid will be not be considered.**

Process

The CAC, CATS submits its overall goal to ODOT by August 15 of each year. Before establishing the overall goal each year, The CAC, CATS will consult with The **Ohio Department of Transportation, Office of Contracts, (through information obtained within quarterly progress reports)** to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the CAC, CATS efforts to establish a level playing field for the participation of DBEs.

A public notice is published regarding the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection at www.pikecac.org for **30** days following the date of the notice. Through the public notice process, the public is informed that comments are accepted on the goals for **45** days from the date of the notice. The notice is published in a local newspaper of daily circulation. The notice includes the web address for the CAC, CATS, where the program can be reviewed.

Overall goal submission to DOT will include a summary of information and comments received during this public participation process, including responses made, if any. The overall goal is in effect October 1 of each year, unless otherwise instructed by ODOT or, if the goal is established on a project basis, by the first solicitation for a DOT-assisted contract for the project.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The CAC, CATS will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The CAC, CATS uses the following race-neutral means to increase DBE participation:

1. The CAC, CATS must have a Public Hearing to enable interested parties to review and comment on the respective DBE Program.
2. Obtain an Ohio Department of Transportation DBE certification packet to interested parties.

Established Annual Goals

It is estimated that, in meeting the overall goal of 0%, 100% will be obtained from race-neutral participation and 0% through race-conscious measures. This is the first year of the CAC, CATS, goal setting and is required due to awards made through the American Recovery and Reinvestment Act of 2009. Therefore no adjustments have been made for prior year averages.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (26.51)

CAC, CATS will not use contract goals to meet any portion of the overall goal. The CAC, CATS does project being able to meet using race-neutral means. Contract goals will be established if over the period to which the overall goal applies, it seems the overall will not be met.

Good Faith Efforts (26.53)

Information to be submitted

Each solicitation for which a contract goal has been established will require the bidders to submit the following information after award of contract.

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

The following personnel are responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible: ***The CAC with assistance from The Ohio Department of Transportation, Office of Transit, will review and determine if the bidder has met his responsibility for bids supported by the Office of Contracts.***

CAC, CATS will ensure that all information is complete and accurate and adequately documents the bidder good faith efforts before CAC commits to the performance of the contract by the bidder.

Administrative reconsideration

Within **30** days of being informed by the CAC, CATS that it is not **responsive** because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. Bidders should make this request in writing to the following reconsideration official: Transit Program Director, **CAC, CATS, 941 Market Street, Piketon, Ohio 45661, (740) 289-2371**. The reconsideration official will not have played any role in the original determination that the bidder did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with the assigned reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The bidder will then receive 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 eligible for administrative appeal to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

A contractor will be required to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor must notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

The prime contractor must obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. **If the contractor fails or refuses to comply in the time specified, CAC, CATS 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.**

Counting DBE Participation (26.55)

DBE participation shall be counted toward overall and contract goals as provided in 49 CFR 26.55.

Certification (26.61 - 26.91)

To be certified as a DBE, a firm must meet all certification eligibility standards. Certified firms are listed on the Ohio Department of Transportation website.

The removal of a DBE=s certification is handled by the Ohio Department of Transportation, Office of Contracts.

Certification Appeals

Any firm or complainant may appeal certification matters to DOT. Such appeals may be sent to:

Department of Transportation

Office of Civil Rights Certification

Appeals Branch

400 7th St., SW, Room 2104

Washington, DC 20590

DOT certification appeal decisions will be promptly implemented if those decision affect the eligibility of DBE's for CAC, CATS DOT-assisted contracting (e.g., certify a firm if DOT has determined that denial of its application was erroneous).

Information Collection and Reporting

Bidders List

The **CAC, CATS** will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

This information will be collected in the following ways by requesting information directly from the previous bidders and current bidders. The bidder has the discretion to submit the requested information, a bidder will not be considered **non-responsive** if it does not choose to submit the requested information. Documentation that information was requested will be retained by the **CAC, CATS**

Monitoring Payments to DBE's

Prime contractors shall be required to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the **CAC, CATS** or DOT. This reporting requirement also extends to any certified DBE subcontractor. A running tally shall be kept of actual payments to DBE firms for work committed to them at the time of contract award.

Interim audits of contract payments to DBE's shall be performed. 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.

Reporting to DOT

CAC, CATS will report DBE participation to USDOT as follows:

CAC, CATS will report DBE participation on a semi-annual basis, using the UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS. These reports will reflect contract awards or commitments and payments actually made to DBE's on DOT assisted contracts.

Confidentiality

CAC, CATS will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, personal financial information submitted in response to the personal net worth requirement to a third party shall not be released (other than USDOT) without the written consent of the submittor.