

Tompkins Consolidated Area Transit, Inc.
Disadvantaged Business Enterprise Plan

Revised
March 17, 2009



TCAT, 737 Willow Ave., Ithaca, New York 14850 www.tcatbus.com

ORIGINAL

SUBPART A – GENERAL REQUIREMENTS

1. Introduction

Tompkins County is a grant recipient of the Federal Transit Administration (FTA). Tompkins Consolidated Area Transit, Inc. (TCAT) is a subrecipient of the County and uses USDOT funds for public transportation projects.

Tompkins Consolidated Area Transit was authorized by the NY General Municipal Law in 1996.¹ On April 1, 1998, the City of Ithaca, Cornell University and Tompkins County established TCAT as a joint venture (public entity) to operate public transportation service. In 2004, representatives of Tompkins County, City of Ithaca and Cornell University reorganized TCAT as a private, not-for-profit (Section 501(c)(3)) corporation. On January 1, 2005, TCAT became the public transit operator serving Tompkins County and the Towns of Richford, Berkshire and Newark Valley in Tioga County.

TCAT directly operates public transportation service and contracts for paratransit service from GADABOUT Transportation Services, Inc. In January 2009, TCAT began operating service from Watkins Glen, in Schuler County, to Ithaca.

This Disadvantaged Business Enterprise program implements the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA"), Pub. L. 102-240, 105 Stat. 1914; the Transportation Equity Act for the 21st Century ("TEA-21"), Pub. L. 105-178, 112 Stat. 107; and Part 26 of the regulations of the United States Department of Transportation.

TCAT reserves the right to amend this Program from time to time at its discretion, or as required to comply with changes in applicable statutes, regulations or guidelines.

2. Objectives (26.1)

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

3. Applicability (26.3)

Tompkins County is the recipient and TCAT is a subrecipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal Transit Laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L. 105-178.

4. Definitions (26.5)

TCAT will adopt the definitions contained in Section 26.5 for this plan.

5. Non-discrimination Requirements (26.7)

TCAT does not 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, TCAT 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

¹ Article 5-I, Section 119-s-1 of the General Municipal Law

objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

6. Record Keeping Requirements (26.11)

TCAT will report DBE participation to DOT as follows:

TCAT will report DBE participation twice a year, using DOT form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

TCAT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts (26.11(c)). The purpose is to allow the use of the bidders list to calculating overall goals. The bidders list will include the name, address, DBE status, age and annual gross receipts of firms. TCAT will collect this information in the following ways:

1. By inserting a contract clause requiring prime bidders to furnish information for themselves and for sub contractors.
2. By soliciting this information on TCAT's website (tcatbus.com).

7. Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

Tompkins County has signed the following assurance, applicable to all DOT-assisted contracts and their administration. This language will appear in financial assistance agreements with any subrecipients such as TCAT

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

[Note -This language is to be used verbatim, as it is stated in 26.13(a).]

Contract Assurance: 26.13(b)

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.

[Note - This language is to be used verbatim, as it is stated in 26.13(b).]

SUBPART B – ADMINISTRATIVE REQUIREMENTS

8. DBE Program Updates (26.21 (a)(2))

FTA recipients who anticipate awarding \$250,000 or more in FTA funds for prime contracts during a federal fiscal year are required to submit a DBE Plan and an annual DBE goal. Bus procurements are excluded from the contract threshold since bus manufacturers submit their DBE plans directly to the FTA. Tompkins County and/or TCAT reasonably anticipates awarding in excess of \$250,000 in FTA assisted prime contracts in future federal fiscal years, therefore, they TCAT will continue to carry out this program until all funds from DOT financial assistance have been expended.

9. POLICY STATEMENT (26.23)

The Policy Statement is elaborated on the first page of the plan.

10. DBE Liaison Officer (DBELO) (26.45)

TCAT has designated its Service Development Manager as DBE Liaison Officer (DBELO) for FTA programs.² In that capacity, the Service Development Manager is responsible for implementing the DBE program and ensuring that TCAT complies with all provisions of 49 CFR Part 26. The TCAT Service Development Manager has direct, independent access to the TCAT General Manager concerning DBE program matters.

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 from TCAT as required by DOT.
2. Reviews third party contracts and TCAT's purchase requisitions for compliance with this program.
3. Determines TCAT's annual goals and project goals for FTA-assisted contracts.
4. Ensures TCAT's 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 TCAT's solicitations, both race-neutral methods and race conscious (contract specific) goals and monitors results.
6. Analyzes TCAT's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings, in pre-award determinations of responsive and responsible bidders or proposers.
8. Advises the TCAT General Manager and Board of Directors on DBE matters and achievement.
9. Advises DBEs and the business community on FTA-assisted contracting opportunities.
10. Evaluates contractor(s) performance in achieving DBE goals and objectives.
11. Acts as liaison to the Uniform Certification Process in New York State.

² TCAT Service Development Manger, 737 Willow Ave., Ithaca, NY 14850, 607 277-9388 ext. 300.

11. DBE Financial Institutions (26.27)

TCAT will use the directory of DBE Financial Institutions maintained by the New York State Department of Transportation as its DBE certification process. TCAT will presume to accept DBE certification by other public agencies or authorities as valid, but they reserve the right to conduct their own assessment following standards and methods outlined of 49 CFR part 26.

[Note -This language is to be used verbatim, as it is stated in 26.13(b).]

12. Prompt Payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from receipt of each payment the prime contractor receives from TCAT. The prime contractor agrees further to return retainage payments to each subcontractor within 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 TCAT. This clause applies to both DBE and non-DBE subcontractors.

13. Monitoring and Enforcement Mechanisms (26.37)

TCAT 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. TCAT also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

14. DBE Goal-setting Methodology (26.45)

The steps leading up to determining a goal are as follows:

1. Determine TCAT's local market area.
2. Identify projects to be procured with FTA funds during each Federal Fiscal Year.
3. Identify DBE and Non-DBE Firms Within Local Market Area
4. Calculate TCAT's Goal as a weighed average of the ratio of DBE to Non-DBE firms proportionate to the value of the projects.

15. Transit Vehicle Manufacturers (26.49)

TCAT will require each transit vehicle manufacturer (TVM), 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. Alternatively, TCAT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation when buying buses.

16. DBE Goal Process

TCAT will submit a DBE goal to FTA (DOT) by August 1 of each year.

TCAT will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection on the TCAT website (www.tcatbus.com) or at the TCAT facility during normal business

hours, for 30 days following the date of the notice. TCAT will inform the public that it and DOT will accept comments on the goals for 45 days from the date of the notice.

The goal shall be published in the APTA Passenger Transport and on the TCAT website. (www.tcatbus.com).

TCAT's DBE goal submission to FTA (DOT) will include a summary of information and comments received during this public participation process and our responses.

TCAT will begin using its overall goal on October 1 of each year, unless TCAT has received other instructions from DOT *[or, if the goal is established on a project basis, by the time of the first solicitation for a DOT-assisted contract for the project]*.

17. Breakout of Estimated Race-Neutral and Race-Conscious Participation

TCAT expects to meet the maximum feasible portion of its overall goal by using race-conscious means of facilitating DBE participation, including,

- 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;
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

18. Contract Goals (26.51)

TCAT will use contract goals to meet any portion of the overall goal TCAT does not project being able to meet using race-neutral means. TCAT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. TCAT need not establish a contract goal on every such contract. 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)

TCAT will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

19. Good Faith Efforts (26.53)

TCAT treats bidder/offers' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information with their bid or proposal:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm 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.

20. Demonstration of Good Faith Efforts

The obligation of the bidder/offers is to make good faith efforts. The bidder/offers 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 TCAT Service Development Manager is responsible for determining whether a bidder/offers who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

TCAT will ensure that all information is complete and accurate and adequately documents the bidder/offers' good faith efforts before TCAT commit to the performance of the contract by the bidder/offers.

21. Administrative reconsideration

Within 14 days of being informed by TCAT that it is not *responsive* because it has not documented sufficient good faith efforts, a bidder/offers may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: Joseph Turcotte, General Manager, TCAT, 737 Willow Ave., Ithaca, NY 14850, 607 277-9388 ext. 444, jt1@tcatmail.com. The reconsideration official will not have played any role in the original determination that the bidder/offers did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offers 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. TCAT 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 U.S. Department of Transportation.

22. Good Faith Efforts when a DBE is replaced on a contract

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

In this situation, TCAT will require the prime contractor to obtain its prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. [Note - Include the administrative remedies you will use for noncompliance (see 26.53(f)(3)). The following two sentences are examples of such remedies.] 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 TCAT contracting officer may issue a termination for default proceeding.

23. Counting DBE Participation (26.55)

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

24. Certification Process (26.61 - 26.91)

TCAT will use the Unified Certification Process maintained by the New York State Department of Transportation in lieu of conducting its own certification process. TCAT will not be certifying any firm for DBE eligibility.

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

**Contract Audit Bureau
DBE Certification
50 Wolf Road, 1st Floor
Albany, NY 12232
Telephone: (518) 457-3180
Fax: (518) 457-1675
jejones@dot.state.ny.us**

<https://www.nysdot.gov/main/business-center/civil-rights/ucp-directory>

25. Monitoring Payments to DBEs

TCAT 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 TCAT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

TCAT 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.

26. Reporting to DOT

TCAT will report DBE participation to DOT as follows:

TCAT will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

27. Confidentiality

TCAT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local Freedom of Information Laws.

Tompkins Consolidated Area Transit, Inc.
Disadvantaged Business Enterprise
Objectives /Policy Statement

Section (26.1, 26.23)

Tompkins Consolidated Area Transit, Inc. (TCAT) established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Tompkins County is the recipient of Federal financial assistance from the US Department of Transportation. TCAT is the County's subrecipient that conducts procurements using FTA funds. As a condition of receiving Federal assistance, TCAT signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of TCAT 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 -

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The TCAT Service Development Manager has been delegated as the DBE Liaison Officer for the public transit program. In that capacity, The TCAT Service development Manager is responsible for implementing all aspects of the DBE program. The DBE program has the same priority as compliance with all other legal obligations incurred by TCAT in its financial assistance agreements with Tompkins County.

TCAT has disseminated this policy to the TCAT Board of Directors and Tompkins County Administrator. TCAT have distributed this policy to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by publishing a notice in the Ithaca Journal, Tompkins County Chamber of Commerce newsletter and posting a notice and file on the TCAT web site (www.tcatbus.com).



Joseph Turcotte, General Manager, TCAT

Date: 3-26-09