

1. Objectives/Policy Statement (Section 26.1, 26.23)

TEXARKANA URBAN TRANSIT DISTRICT
1402 Texas Blvd Texarkana, TX 75501 (903) 794-8883, fax: (903) 794-0437



DBE Policy Statement (26.1, 26.23)

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

It is the policy of TUTD to ensure that DBEs are 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Eric Elmore, Administrative Supervisor, has been delegated as the DBE Liaison Officer. In that capacity, Eric Elmore 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 TUTD in its financial assistance agreements with the Department of Transportation.

TUTD has disseminated this policy statement internally to the Board of Directors and all TUTD administrative staff through posting on the employee bulletin board and on our shared network drive. We are distributing this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. A DBE will also be included in all procurements issued by TUTD. The policy statement has been distributed to the Chamber of Commerce and is accessible on TUTD's website. (<http://www.t-linebus.org>)

Chris Brown, Executive Director

Date

2. Applicability (26.3)

TUTD is the recipient 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.

3. Definitions (26.5)

TUTD has adopted the definitions contained in Section 26.5 for this program.

4. Nondiscrimination (26.7)

TUTD never excludes 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, TUTD does not, directly or through contractual or other arrangements, use criteria of 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.

5. Record Keeping Requirements (26.11)

Reporting to DOT: 2611(b)

TUTD reports DBE participation to DOT as follows:

TUTD reports DBE participation semi-annually, using DOT form 4630. These reports reflect payments actually made to DBEs on DOT-assisted contracts. Goals are reported every three years and semi-annually for all funds covered by our goal. All DBE reporting is done in TEAM and all DBE submissions are uploaded into TEAM.

Procedures for reporting to TEAM: The Financial Specialist is responsible for entering the information into TEAM. The DBELO tracks and maintains, with a spreadsheet, all expense information needed to complete a DBE report. Monitoring is achieved by the DBELO and the Financial Specialist collaborating on all DBE expenses. TUTD enters the DBE information directly into TEAM.

6. DBE Program Updates (26.21)

Since TUTD has received a grant of \$250,000 or more in FTA planning capital. And/or operating assistance in a federal fiscal year, we are carrying out this program until all funds from DOT financial assistance have been expended. We provide to DOT updates representing significant changes in the program.

7. Set-asides or Quotas (26.43)

TUTD does not use quotas in any way in the administration of this DBE program.

8. DBE Liaison Officer (DBELO) (26.25)

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

Eric Elmore, Administration Supervisor
Texarkana Urban Transit District
1402 Texas Blvd
Texarkana, TX 75501
903-794-0746
eelmore@atcog.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TUTD complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director, L. D. Williamson concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 1** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO works with the following staff: (Public Transportation Manager and Operations Coordinator) who 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 request 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 attainment and identifies ways to improve progress.
6. Analyzes TUTD's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains TUTDs updated directory on certified DBEs.

9. DBE Financial Institutions

It is the policy of TUTD 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 contract to make use of these institutions. We have made the following efforts to identify and use such institutions. TUTD has researched the availability of DBE owned financial institutions at <http://www.federalreserve.gov/releases/mob/> and did not find any within our area. TUTD will review this on an annual basis.

We make the following efforts to identify and use such institutions:

Minority owned financial institutions are identified by consulting the list maintained by the Federal Reserve at http://federalreserve.gov/releases/mob//current/min_bnk_lst.pdf

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

10. DBE Directory (26.31)

TUTD uses the *Texas Department of Transportation TUCP DBE* and the *Arkansas Unified Disadvantaged Business Enterprise Directory*. The directories list the firm's name, address, phone number, date of most recent certification, and type of work the firm has been certified to perform as a DBE. We make the Directories available to all interested parties via our website (<http://www.t-linebus.org>) and by hard copy. The Directories can be found in **Attachment 2** to this program.

11. Bidders List (26.11)

TUTD has created 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 includes the name, address, DBE/non-DBE status, age of firm and annual gross receipts of firms. The Bidders List can be found in **Attachment 3** to this program.

TUTD collects this information in the following ways:

- TUTD includes a contract clause requiring prime bidders to report the names/addresses, and other relevant information of all firms who quote to them on subcontracts.
- TUTD includes a notice in all solicitations to firms quoting on subcontracts to report information directly to the recipient.

12. Overconcentration (26.33)

TUTD has not identified that overconcentration exist in the types of work that DBEs perform.

13. Contract Assurance (26.13)

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

Assurance 26.13(a)

TUTD will 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 will 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 TUTD of its failure to carry out its approved program, the Department will 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.).

This language appears in financial assistance agreements with sub-recipients.

Contract Assurance 26.13(b)

We ensure that the following clause is placed in every DOT-Assisted contract and subcontract: The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will 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 breach of this contract, which will result in the termination of this contract or such other remedy as the recipient deems appropriate.

14. Prompt Payment Mechanisms (26.29)

TUTD includes 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 the receipt of each payment the prime contract receives from TUTD. 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 TUTD. This clause applies to both DBE and non-DBE subcontracts. Failure to adhere to the above referenced time frame without written approval may result in sanctions including, but not limited to, withholding of future payments, fines, or termination of contract.

15. Business Development Programs

TUTD has not established a business development program.

16. Monitoring and Enforcement Mechanisms (26.37)

TUTD has taken the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 4** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. TUTD will implement appropriate mechanisms to ensure compliance with the party's requirements by all program participants. The mechanisms TUTD may use include, but are not limited to:
 - a. TUTD will notify subcontractors (DBE and non-DBEs) of the Prime Contractor's responsibility for prompt payment and encourage subcontractors to notify TUTD in writing with any possible violations to the prompt payment mechanism.
 - b. Withholding payment from Prime Contractors that do not comply with the prompt payment provision noted above, where it has been determined by the TUTD DBELO that delay of payment to the subcontractor is not justified.
 - c. Stopping work on the contract unit until compliance issues are resolved.
 - d. Terminating the contract.
4. TUTD will verify that the work committed to DBE at contract award is actually performed by DBEs. This is accomplished by:
 - a. Requiring Prime Contractor's to report DBE work performed in each monthly progress report along with an indication of hours worked, any cost incurred and the amounts paid to DBE(s).
 - b. Ensuring that DBE participation is credited toward the overall goal or contract goals only when payments are actually made to DBE firms.

17. Fostering Small Business Participation (26.39)

The small business program element is intended to pull all of TUTD's small business efforts into a single unified place in this DBE Program. DBEs are small businesses, and therefore the following program provisions help small businesses but also help DBEs. The following provisions outline ways that TUTD will utilize small businesses and make it easier for them to compete for DOT-assisted contracts.

The TUTD Small Business Program will be implemented in July prior to the new fiscal year by our DBE Officer, Eric Elmore. TUTD will implement an Alternative Acquisition Strategy. Request for Proposals (RFP) and Request for Qualifications (RFQ) will be issued for any and all TUTD purchases that accumulate annually over the \$3000.00 FTA purchase threshold.

Request for Proposals (RFP) and Request for Qualifications (RFQ) will be sent to any and all registered small businesses.

Registers through the Texarkana Chamber of Commerce, the Texarkana African American Chamber of Commerce, the Texarkana Small Business Program Development Department located on the Texas A&M University Texarkana, the Texas Department of Transportation (TxDOT) and the Arkansas Highway Transportation Department (AHTD) will be verified and Request for Proposals (RFP) and Request for Qualifications (RFQ) will be sent to all participating small business owners.

Another element TUTD has decided to implement is the Business Development Opportunity by hosting a Small Business Participation Fair annually. Our DBE Officer, Eric Elmore will publish a Public Notice in the Texarkana Gazette Newspaper and issue Public Service Announcements (PSA) on the local public television channel and radio stations inviting small businesses to attend and participate in the Small Business Participation Fair.

At the fair, small business owners will be given instructions on how to correctly submit the TUTD's Request for Proposals (RFP), Request for Qualifications (RFQ) and Purchasing Bids. They will also be furnished a TUTD projected list of acquisitions and purchases for the next fiscal year. There will also be a Question and Answer element that will afford small businesses the opportunity for any and all questions to be answered by the TUTD DBE Officer.

We have contacted the Texarkana Chamber of Commerce, the African American Chamber of Commerce, the Texarkana Small Business Program Development Department located on the Texas A&M University Texarkana, the Texas Department of Transportation (TxDOT) and the Arkansas Highway Transportation Department (AHTD) for listings and/or information of small businesses within our area.

We have researched the Small Business Administration website for small businesses located in larger cities outside of our local area.

TUTD Eligibility Requirements

In order for a small business to be eligible, the small business must meet the following requirements:

- Be independently owned and operated;
- Not dominant in the field of operation;
- Principal office is located in Texas, Oklahoma, Arkansas or Louisiana;
- Owners (officers, if a corporation) are domiciled in Texas, Oklahoma, Arkansas or Louisiana;
- A business with 100 or fewer employees; an average annual gross receipts of \$14 million or less, over the last three tax years and;
- Be certified as a small business with the Small Business Administration.

Verification of eligibility will be made through the Central Contractor Registration (CCR) database.

18. Transit Vehicle Manufacturers Goals (26.49)

TUTD requires 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. Alternatively, TUTD 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.

19. Overall Goals (26.45)

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program.

In accordance with Section 26.45(f) TUTD will submit its overall goal to DOT by the date determined by the Federal Transit Administration. Before establishing the overall goal, TUTD will consult with the local Small Business Administration, Chambers of Commerce, Business & Professional Women groups, and other community organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TUTD's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that TUTD and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be issued in local newspapers and on the <http://www.t-linebus.org> website. The notice must include addresses to which comments may be sent.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

20. Breakout of Estimated Race-Neutral & Race-Conscious Participation (26.51)

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 6** to this program. This section of the program will be updated when the goal calculation is updated.

Contract Goals

TUTD uses contract goals to meet any portion of the overall goal TUTD does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We have established contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.) We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

21. Good Faith Efforts Procedures (26.53)

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror 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 DBELO and/or his/her designee are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

We ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

TUTD treats bidders/offer's compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information.

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 participating;
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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 14 days of being informed by TUTD that it is not responsible 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:

Owetta Walton, Public Transportation Manager
Texarkana Urban Transit district
1402 Texas Blvd
Texarkana, TX 75501
903-255-3529
owalton@atcog.org

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

TUTD requires 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. We 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, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of TUTD to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 1 % has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror is required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

22. SUBPART D – CERTIFICATION STANDARDS

TUTD uses the certification process of the TUCP to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards, and be listed in the TUCP directory.

For information about the certification process or to apply for certification, firms should contact the TXDOT DBE Program at <http://www.txdot.gov/business/partnerships/dbe.html>

23. SUBPART E – CERTIFICATION PROCEDURES

Unified Certification Programs

TUTD is a member of the Texas Unified Certification Program (TUCP) administered by Texas Department of Transportation. The TUCP will meet all of the requirements of this section. The following is a description of the TUCP:

The Texas Unified Certification Program is a certification process for the Federal Disadvantaged Business Enterprise (DBE) Programs in Texas. A business' **DBE certification** is valid at any Texas entity that receives U.S. Department of Transportation (DOT) funds and has a DBE Program.

Small businesses desiring DBE certification must submit an application to one of six certifying agencies within the state. The business' location determines which agency to contact.

Firms certified by each of the six agencies are included in one consolidated and centralized DBE Directory. The TUCP is required by the U.S. Department of Transportation.

Procedures for Certification Decisions

TUTD is not a certifying agency. DBEs should see the TUCP website for information concerning re-certification, "No Change" Affidavits and Notices of Change.

Denials of Initial Requests for Certification

Potential DBE's should see the TUCP website for information concerning denials of initial requests for certification.

Removal of a DBE's Eligibility

A DBE facing removal from the DBE list should see the TUCP website for information concerning de-certification proceedings.

Certification Appeals

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

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

24. SUBPART F – COMPLIANCE AND ENFORCEMENT

Information, Confidentiality and, Cooperation

We safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. TUTD is a Political Subdivision of the State of Texas and is therefore subject to Texas Open Records Act/ Texas Public Information Act. Texas Government Code, Chapter 552, gives you the right to access government records; and an officer for public information and the officer's agent may not ask why you want them. All government information is presumed to be available to the public. Certain exceptions may apply to the disclosure of the information. Governmental bodies shall promptly release requested information that is not confidential by law, either constitutional, statutory, or by judicial decision, or information for which an exception to disclosure has not been sought. Governmental bodies may charge a reasonable fee related to gathering and re-producing the requested information.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

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

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

ATTACHMENTS

1. Organizational Chart
2. DBE Directories (TX and AR)
3. Bidder's List
4. Monitoring and Enforcement Mechanisms
5. Overall Goal Calculation
6. Breakout of Estimated Race-Neutral & Race-Conscious Participation
7. Form 1&2 for Demonstration of Good Faith Efforts
8. TUCP Letter
9. Regulations: 49 CFR Part 26