

Capital Area Transportation Authority



AMENDMENT OF SOLICITATION

1. AMENDMENT NO: 2	2. SOLICITATION NO: 2015-R09	3. SOLICITATION DATE: 23 FEB 2015	4. EFFECTIVE DATE: 05 MAR 2015
-----------------------	---------------------------------	--------------------------------------	-----------------------------------

5. ISSUED BY
Capital Area Transportation Authority
Purchasing and Contracts
4615 Tranter Street
Lansing, MI 48910

Contractor is required to sign this document and return it with the bid/proposal.

6. DESCRIPTION OF AMENDMENT

a. Exhibit K "Disadvantaged Business Enterprise" is hereby replaced (see attached).

b. All other terms and conditions remain unchanged.

NAME OF OFFEROR (Type or Print)	TITLE OF OFFEROR
(Signature of person authorized to sign)	(Date Signed)

EXHIBIT K DISADVANTAGE BUSINESS ENTERPRISE (DBE)

For assistance in identifying subcontracting opportunities or with questions concerning the provisions in this Exhibit ONLY, contact Rich Bannon, CATA's DBE Liaison Officer at 517.394.1100. rbannon@cata.org

1. Disadvantaged Business Enterprise (DBE) Policy

The Capital Area Transportation Authority (CATA) receives Federal financial assistance from the U. S. Department of Transportation (USDOT). As a condition of receiving USDOT assistance, CATA has signed an assurance that it will comply with 49 CFR Part 26, Disadvantage Business Enterprise (DBE) Program.

It is the policy of the CATA 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;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

"Disadvantaged Business Enterprise" or "DBE" means a for profit small business concern: (1) which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or in the case of a corporation in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

CATA's agency-wide DBE goal is 1%.

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 CATA deems appropriate.

Only the work actually performed by a certified DBE on federally funded projects will be counted towards the DBE participation. The cost of supplies and materials obtained by the certified DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted per 49 CRF Part 26. Work that a certified DBE subcontracts to a non-DBE firm does not count toward DBE participation. A certified DBE should perform at least 30 percent of the total cost of its contract with its own work force. If materials or supplies are obtained from a certified DBE manufacturer, 100 percent of the cost will be counted for DBE participation. If the materials or supplies are purchased from a certified DBE dealer, 60 percent of the cost will be counted for DBE participation.

DBE achievement will not be counted toward the overall contract until the certified DBE has been paid.

2. Record Retention

The Contractor will keep records and documents for a period of three years following performance of this contract to indicate compliance with CATA's DBE goal. These records and documents will be made available at reasonable times and places for inspection by any authorized representative of CATA and will be submitted to CATA upon request.

3. Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the prime contractor receives from CATA. The prime contractor agrees further to return retainage payments to each subcontractor within 14 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 CATA. This clause applies to both DBE and non-DBE subcontractors. If the prime contractor determines the work to be unsatisfactory, they must notify CATA's Project and Procurement Manager immediately, in writing, and state the reason(s) of unsatisfactory work performance. Failure to satisfy prompt payment to DBE's no later than 14 days from the receipt of payment from CATA will be cause to terminate the contract.

4. False, Fraudulent, Dishonest Statements and Debarment

CATA will bring to the attention of the U. S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program. CATA will also inform prime contractors and subcontractors participating in CATA contracts of the legal ramifications of any false, fraudulent, or deceitful statements or representations utilized by them to participate in the DBE program. This may include suspension or debarment or referral to the Department of Justice for prosecution under 18 U.S.C. 1001 or other applicable provisions or law.

5. DBE Good Faith Efforts

If an Offeror does not meet the DBE goal, it shall nevertheless be eligible for award of the contract if it can demonstrate to the Contracting Officer that it has made a good faith effort to meet the DBE goal. This good faith efforts documentation should be submitted when the initial response to CATA's solicitation is due. All contractors, including DBE prime contractors, are required to submit good faith efforts documentation, if necessary. In evaluating an Offeror's good faith effort submission, CATA will only consider those documented efforts that occurred prior to the good faith efforts determination.

In the event that a firm submitted by an Offeror is not certified, the Offeror will be notified and given an opportunity to substitute that firm with a certified DBE firm. The Offeror will have five (5) calendar days from the date of notification to accomplish the substitution. In the event the Offeror is unable to contract with another substitute DBE firm, the good faith efforts that the Offeror made in attempting to contract with a substitute DBE firm must be documented to the Contracting Officer at the end of the same five (5) calendar day period.

In making a determination that the Offeror has made a good faith effort to meet the DBE goal, the Offeror shall furnish to the Authority, as part of its DBE utilization information provided under the Submission of DBE Utilization Forms and Related Documentation provision, such specific documentation concerning the steps it has taken to obtain DBE participation.

The Contracting Officer must make a fair and reasonable judgment whether an Offeror made adequate good faith efforts. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect an Offeror to take if the Offeror were actively and aggressively trying to obtain DBE participation sufficient to meet DBE participation. Mere pro forma efforts are not good faith efforts to guarantee DBE participation. It is emphasized, however, that determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

(a) The following is a list of types of actions which will be considered as part of the Offeror's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

In making a determination that the Offeror has made a good faith effort to meet the DBE goal, the Offeror shall furnish to CATA, as part of its DBE utilization information, such specific documentation concerning the steps it has taken to obtain DBE participation. By way of illustration and not limitation, CATA will consider the following information:

- (1) Whether the Offeror attended any pre-bid or pre-proposal meetings scheduled by CATA to discuss, among other matters, DBE participation opportunities and acknowledged receipt of DBE certified vendor lists;
- (2) Whether the Offeror advertised in general circulation, trade association, and/or minority/women-focus media concerning subcontracting opportunities;
- (3) Whether the Offeror provided written notice to a reasonable number of DBEs that their interest in the contract was being solicited in sufficient time to allow DBEs to participate effectively;
- (4) Whether the Offeror followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- (5) Whether the Offer contacted the Michigan Department of Transportation (MDOT) for a list of certified DBE firms;
- (6) Whether the Offeror selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down the contract into economically feasible subcontracts to facilitate DBE participation);
- (7) Whether the Offeror provided interested DBEs with adequate information about the plans, specifications, scope of work and requirements of the contract;
- (8) Whether the Offeror negotiated in good faith with interested DBEs regarding their capabilities, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation;
- (9) Whether the Offeror negotiated in good faith with interested DBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested DBE firms;
- (10) Whether the Offeror made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance, etc., as required by CATA or the Offeror;
- (11) Whether the Offeror made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- (12) Whether the Offeror effectively used the services of available minority and women community organizations; contractor groups; local, State, and Federal business assistance offices; and other organizations that provide assistance in the identification of DBEs;
- (13) Whether the Offeror obtained written documentation from a bona fide surety company indicating that bonding was denied and for what reason(s), prior to the DBE being rejected as a potential subcontractor for failing to obtain Offeror-required bonding. Documentation furnished by a surety company will be subject to verification by CATA; and
- (14) Whether other Offeror's have attained a sufficient level of DBE participation to meet the contract goals.

6. Administrative Reconsideration

Within 3 days of being informed by CATA that the Offeror is not responsive because it has not documented sufficient good faith efforts, an Offeror may request administrative reconsideration. The Offeror should make this request, in writing, to the following reconsideration official: Rich Bannon, 4615 Tranter Street, Lansing, MI 48910. The reconsideration official will not have played any role in the original determination that the Offeror did not document sufficient good faith efforts.

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

7. Modifications or Substitutions

This Provision applies to all modifications and substitutions under this Contract. The prime contractor will be required to comply with this Provision to the extent needed to achieve the CATA DBE goals agreed to at the time of contract award.

If a prime contractor wishes to terminate or substitute a subcontractor listed as fulfilling its contract goal, it must submit written documentation prior to the termination or substitution of the subcontractor to the Contracting Officer. This will include any changes to items of work, material, services, or firms that differ from those identified on the Intent to Perform As A Subcontractor form(s) on file with the Contracting Officer. The prime contractor must provide any and all documentation and information as may be requested with respect to the requested change.

The prime contractor's documentation shall include the specific reasons for the proposed change. Specific reasons that are acceptable include, but are not limited to: the subcontractor was not able to perform; the subcontractor was unable to produce acceptable work; and/or the subcontractor has submitted an unreasonable escalation in price. In the case of a subcontractor being substituted by another subcontractor, the prime contractor should include the name, address, and telephone number, and principal office of the proposed subcontracting firm. The DBE Liaison Officer will approve or disapprove the change.

If the change involves a subcontractor substitution, the prime contractor must make good faith efforts to replace one DBE subcontractor with another DBE subcontractor. The substitute DBE subcontractor must be certified by an agency in the Michigan's Unified Certification Program (UCP) in order for the prime contractor to receive credit toward fulfilling its DBE participation goal for the contract. In the event that the prime contractor is unable to contract with another DBE firm, good faith effort documentation must be provided to the Contracting Officer describing the unsuccessful attempts to locate a substitute DBE subcontractor. In all situations, the prime contractor may not terminate or substitute a DBE subcontractor without the prior written consent of the Contracting Officer.

The prime contractor must submit a new Intent to Perform as a Subcontractor form for the substitute subcontractor(s) with the request for change, to verify that any new subcontractor(s) are approved and any DBE is certified by an agency in Michigan's Unified Certification Program. The Contracting Officer shall notify the prime contractor in writing of the decision as expeditiously as possible. If the contract has been awarded and the Contracting Officer approves the proposed substitution in writing, the prime contractor shall provide a copy of the executed subcontract agreement with the proposed subcontractor to the Contracting Officer within fourteen (14) days of its receipt of the substitution approval.

If the change involves a modification, the Contractor must submit, if applicable, the Intent to Perform as a Subcontractor form specified for contract modifications for any CATA subcontractor affected by this change. This form may be obtained from the Contracting Officer.

If the Contractor does not comply with this Provision, CATA may elect to apply contract remedies as defined in 49 CFR Part 26, or other contract remedies, as appropriate. Additionally, the Contracting Officer may order that the profits from the terminated portion of the CATA subcontract be forfeited by the Contractor.

ATTACHMENT 1 TO EXHIBIT K

CAPITAL AREA TRANSPORTATION AUTHORITY – DBE FORM

**INTENT TO PERFORM AS A SUBCONTRACTOR
FOR A CONTRACT AWARD**

All subcontracting firms to be used on this solicitation must fill out this form. DBE firms participating in CATA's contracting opportunities must have "current" certification status with Michigan's Unified Certification Program (UCP) prior to award of this contract. DBE certification of any firm must be current; DBE certification is effective for three (3) years from the date of written notification of certification. If CATA determines that the firm is not an eligible DBE firm for CATA contracts and subcontracts, the prime contractor will be notified of the ineligibility of the listed firm. The submission of this form is considered an issue of responsibility and CATA will not award a contract to any Offeror who has not supplied this documentation.

1. Name of Offeror / Prime Contractor _____.
2. The undersigned has been certified by the Michigan UCP (AGENCY)_____.
3. The undersigned is prepared to perform the following described work and/or supply the material listed in connection with the above project (where applicable specify "supply" or "install" or both):

and at the following price \$ _____, or %DBE participation _____.

With respect to the proposed subcontract described above, _____% of the dollar value of such subcontract will be sublet and/or awarded to **non-DBE** contractors.

NOTICE: If the DBE firm is not sub-subcontracting any of the work described above, a zero (0) must be shown in the blank above.

(Name of DBE Firm)

BY: _____
(Signature of Owner, President or Authorized Agent)

DATE: ____/____/____ PHONE: _____

(Print or Type - Name of Signature of Owner,
President or Authorized Agent of DBE firm)

DECLARATION OF PRIME CONTRACTOR

I HEREBY DECLARE AND AFFIRM that I am the _____
(Title of Declarant)

and a duly authorized representative of _____
(Name of Prime Contractor)

to make this declaration and that I have personally reviewed the material and facts set forth in this Intent to Perform form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true, the owner or authorized agent of the (DBE) firm signed this form in the place indicated, and no material facts have been omitted.

Except as authorized by the Contracting Officer, the undersigned will enter into a formal agreement with the listed (DBE) firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the CAPITAL AREA TRANSPORTATION AUTHORITY. The undersigned will provide the Contracting Officer a copy of that agreement within three (3) business days of execution.

The Prime contractor designated the following person as their DBE Liaison Officer:

(Name-Please Print)

(Phone)

(E-Mail Address)

Pursuant to 49 CFR Section 26.107, any person [entity] who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes and may be referred to the Department of Transportation, and possibly the Department of Justice, for prosecution.

(Name of Declarant)

(Signature)

(Date)

ATTACHMENT 2 TO EXHIBIT K

CAPITAL AREA TRANSPORTATION AUTHORITY – DBE FORM

INSTRUCTIONS FOR CONTRACTORS
"HOW TO FILL OUT VENDOR PAYMENT REPORT"

The Vendor Payment Report is to be filled out by the Contractor and submitted with each invoice. The instructions below correspond to each item on the reverse side of the report. Please follow the instructions.

1. **Invoice No.**
Fill in the invoice number accompanying this report.
2. **Report No.**
Fill in the number of the report you are sending in sequence. For example: If this is the second invoice you are submitting, you are sending in Report No. 2.
3. **Reporting Period**
This is to be filled in to state the period of time you are reporting. Example: From: April 1, 2009 To: April 30, 2009.
4. **CATA Contract Number**
Fill in the contract number assigned to your project by CATA.
5. **Type of Contract**
Designate the type of contract that has been awarded your company by CATA.
6. **Contractor's Business Name, Address and Telephone Number**
Fill in your company's name, address, and telephone number.
7. **Date of Contract Award**
Fill in the date contract was executed by both you and CATA.
8. **Scheduled Date of Completion**
Fill in completion date of contract as written in contract.
9. **Original Contract Amount**
Fill in dollar amount of original contract agreed upon by you and CATA.
10. **Current Amended Contract Amount and Date**
Fill in dollar amount of original contract plus/minus the dollar amount agreed upon at a later date as a result of contract modifications, if applicable. Include date modification was executed.
11. **Total Amount Received to Date**
Fill in the dollar amount you have received from CATA to-date.
12. **Total Amount Owed**
Fill in the dollar amount of the contract minus amount paid to you by CATA.
13. **Committed DBE Participation**
Fill in the percentage of DBE participation you committed to obtain in the contract.
14. **Instructions for Calculation of DBE Percentage**
15. **Actual DBE Percent Paid-to-Date**
Fill in the calculated dollar amount paid to the DBE divided by the dollar amount you received from CATA.
16. **Name of Subcontractors**
Name all DBE subcontractors. (Use additional sheets as necessary.)
17. **DBE**
State whether the DBE subcontracting firm is a 51% owned and operated by male/female (M=Male, F=Female) and ethnicity (B=Black American, H=Hispanic American, N=Native American, S=Subcontinent Asian American, A= Asian-Pacific American, W=Non-minority female, O=Other) in this column.
18. **Description of Work**
State the work performed by the DBE subcontractor.
19. **Amount and Date of Last Payment**
State the amount and date of last payment made to each DBE subcontractor. Submit evidence of payment, i.e., cancelled check, check register, etc.
20. **Subcontract Value (Dollars)**
State the committed dollar value to the DBE subcontractor for the duration of the contract.
21. **Total Amount Paid-to-Date (Dollars)**
Add all amounts paid to each DBE subcontractor to date.
22. **Percent of Earned Progress to Date**
State dollar amount paid to the DBE subcontractor divided by the amount committed to them.
23. **Amount of This Invoice Allocated to the Subcontractor**
Fill in how much of this invoice will be paid to each DBE subcontractor.
24. **Sub-contractor Certification of amounts earned and paid**
Prime contractor is to complete the affidavit certifying payment made for each committed DBE.

ATTACHMENT 3 TO EXHIBIT K

**CAPITAL AREA TRANSPORTATION AUTHORITY – DBE FORM
VENDOR PAYMENT REPORT**

Capital Area Transportation Authority
4615 Tranter Street
Lansing, MI 48910

For Official Office Use Only	1) Invoice No.	2) Report No.
	3) Reporting Period From: _____ To: _____	

Instructions: All prime contractors are required to complete and submit this report as specified in the contract, or as requested by the Contracts Specialist, until final payment of the contract. Note: Failure to comply with CATA's Disadvantaged Business Enterprise provisions may result in contract termination, or the suspension or debarment of the contractor from doing business with CATA in the future in accordance with the procedures set forth in CATA's Procurement Regulations. To complete this report, see detailed instructions on the proceeding page of Exhibit G. **This report must be submitted with each invoice.**

4) CATA Contract Number		5) Type of Contract (X) () Construction () Service () Professional () Supply		6) Contractor's Business Name, Address and Telephone Number					
7) Date of Contract Award		8) Schedule Date of Completion		9) Original Contract Amount \$ _____		10) Current Contract Amount, Including Modifications (\$ and date) (State amount & date of most recent modification) \$ _____ / ____ / ____			
11) Total Amount Received To Date \$ _____		12) Total Amount Owed \$ _____		13) Committed DBE percentage _____ %		14) DBE Instruction for Calculation of Percentage: Dollar amount paid to DBE divided by dollar amount received by Contractor from CATA.		15) Actual DBE Participation % to Date _____ %	
		Amount of This Invoice \$ _____							
16) Name of Subcontractor	17) DBE Ethnicity and Gender	18) Description of Work	19) Amount & Date of Payment(s) Made During Current Invoice Period	20) Subcontract Dollars	21) Amount Paid to Date (Dollars)	22) % Paid to Date	23) Amount of This Invoice Allocated to Subcontractor		
			\$ _____		\$ _____				
			\$ _____		\$ _____				
			\$ _____		\$ _____				
			\$ _____		\$ _____				
Company Official's Signature & Title			Date Signed		Name & Title of Individual Completing Report				
			/ /						

ATTACHMENT 4 TO EXHIBIT K

CAPITAL AREA TRANSPORTATION AUTHORITY

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
BIDDER DOCUMENTATION OF GOOD FAITH EFFORT**

Bidder Name:	
Project Name:	
Project Number:	
Total Bid/Proposal Amount \$:	

INSTRUCTIONS:

As a condition of doing business with CATA and in accordance with 49 CFR Part 26 Section 26.53, all bidders on CATA contracts and Procurements are required to demonstrate compliance with this part for the Disadvantaged Business Enterprise (DBE) program and policy. Each bidder must complete and submit the following, certifying evidence of compliance. If you have attained the amount of DBE participation required to meet the project's established DBE goal you must only complete Section 1 and 3 of this document. If you have not attained the amount of DBE participation required you must complete the entire form and provide all required supporting documentation to document good faith effort.

SECTION 1: Verification of Compliance with the DBE Goal

Business Name	Business Phone	Source of Certification	Dollar Value of Contract	Percent of Total Contract

Bid Amount:	Dollar DBE Participation:	Percent DBE Participation:
--------------------	----------------------------------	-----------------------------------

SECTION 2: Documentation of Good Faith Effort

List all areas of work offered to DBE Firms and the estimated value of each.

Attach Scope of work or portions of work selected for DBE participation

	Estimated Value

List all certified DBE Firms contacted the portions of work to be performed and the reasons for declining their bid or offer.

Business Name	Contact Name	Phone Number	Contact Date	Scope of Work Solicited	Reason Bid Declined	Method of Notice of Decline

Please attach a copy of all solicitations for bids or proposals and or written notices distributed to DBEs.
In the space provided below please describe actions taken to solicit and select DBEs to participate on the project.

SECTION 3: Acknowledgement

I (Print Name) certify that the information contained herein is true and correct. I acknowledge that CATA may impose a penalty for submitting false information.

Signature: _____

Title: _____

Date: _____

Full Business Name: _____

Business Address: _____

Area Code/Telephone Number: E-Mail: _____

SWORN TO AND SUBSCRIBED, before me, this _____ day of, _____

NOTARY PUBLIC

My Commission Expires

ATTACHMENT 5 TO EXHIBIT K

AFFIDAVIT CERTIFYING PAYMENT TO DBE

The undersigned prime contractor for each committed DBE certifies payment was made to the firm indicated. Two copies must be submitted by the prime contractor, one to the Project Manager after each progress payment is made to any DBE whose work is part of the committed goal on the project and one to CATA DBE Officer.

Contract No: _____ Project Name: _____

Prime Contractor: _____

DBE Name: _____ Subcontract No. _____

The undersigned prime contractor on CATA Contract hereby certifies that payment was made to the above named DBE, for material and/or work performed under the indicated contract, as follows:

Amount Paid \$ _____ for _____

This certification is made under Federal and state laws concerning false statement. The undersigned firm understands also that supporting documentation for this payment is subject to audit, and it will be retained for a minimum of three years from the project acceptance date.

I declare under penalty of perjury, as set out and any other applicable State or Federal laws that the statements made on this document are true and complete to the best of my knowledge.

Title: _____

Print Name: _____

Signature: _____ Date: _____



The Undersigned subcontractor/supplier/manufacturer for the above named project hereby certifies that payments were received and/or justification by contractor is correct.

I declare under penalty of perjury, as set out and any other applicable State or Federal laws that the statements made on this document are true and complete to the best of my knowledge.

Subcontractor/Supplier/Manufacturer

By: _____ Title: _____

Date: _____