

Compliance Document # 2017.1.1	Effective Date: 10/27/17
DBE Compliance Program & Policy	Date of Revision: 06/27/18

Progress Rail

A Caterpillar Company

Transit Vehicle Manufacturer Disadvantaged Business Enterprise Corporate Compliance Program and Policy

1.0 Disadvantaged Business Enterprise Policy

Progress Rail Locomotive Inc. (PRL) has established a Transit Vehicle Manufacturer (TVM) Disadvantaged Business Enterprise (DBE) Program plan in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulation (CFR) Part 26. PRL anticipates receiving Federal Transit Administration (FTA) assistance through the award of locomotive related TVM procurements. PRL has signed an assurance to FTA that as a TVM, PRL shall not discriminate based on race, color, national origin, or sex in the award and performance of any FTA assisted contract or in the administration of PRL's DBE Program or the requirements of 49 CFR Part 26. PRL understands its legal obligations to comply with the DBE regulations. Upon notification from FTA to PRL of its failure to carry out its approved DBE Program, FTA may impose a sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S. C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S. C. 3801 *et seq.*).

It is our policy to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to participate with PRL in FTA funded TVM procurements. Our policy is to:

1. Ensure nondiscrimination in the sub-supply of components for TVM contracts;
2. Create an environment on which DBEs can compete fairly with PRL for FTA funded TVM contracts;
3. Administer our DBE Program;
4. Ensure that only firms that fully meet DBE certification eligibility standards are permitted to be counted as DBEs on PRL's TVM contracts;
5. Provide DBEs and small business concerns with referrals to business development services so they can compete successfully;
6. Monitor and enforce the requirements of the DBE Program on sub-supply procurements awarded by PRL to suppliers and DBEs;
7. Provide timely DBE participation reports to FTA on our TVM sub-awarded contracts; and
8. Address DBE Program issues and concerns through the DBE Liaison Officer.

Guylando Moreno, Vice-President of Compliance, serves as the DBE Liaison Officer (DBELO). In this capacity, Mr. Moreno is responsible for implementing the DBE Program plan and

Approved by

William P. Ainsworth, CEO

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ensuring PRL is compliant with its TVM certification obligations. Mr. Moreno is available via email at: supplier_diversity@progressrail.com.

PRL fully embraces the commitment to provide DBEs with the maximum practical opportunities to participate with us on FTA funded TVM procurements.

2.0 Definitions

PRL will adopt the definitions contained in 49 CFR Part 26, Section 26.5. The pertinent definitions are:

- 2.1 Disadvantaged Business Enterprise or DBE** means a for-profit small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or in the case of a corporation, in which 51% of the stock is owned by one or more such individuals and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For purposes of this Program and Policy, "DBE" refers to a firm who is certified as a DBE by a U.S. DOT recognized certification agency, which complies with the Commercially Useful Function requirements and is included on a PRL contract for purposes of achieving a participation goal as established by a government entity.

- 2.2 Disadvantaged Business Enterprise Program (DBE Program)** means the program plan that describes how PRL will implement the intention to provide opportunities for certified DBEs and non-DBEs to participate in FTA funded TVM procurements and to follow the requirements of 49 CFR Part 26. (Attachment 1)

- 2.3 Commercially Useful Function** defines the role a DBE must perform in a transaction in order for the transaction to be given credit under the DBE program. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

To perform a commercially useful function with respect to materials and supplies, the DBE must: (1) negotiate price, (2) determine quality and quantity, (3) order the materials, and (4) pay for the materials itself.

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

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then the DBE is not performing a commercially useful function.

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2.4 Code of Conduct is adopted by PRL to communicate its policies and values to its officers, employees, suppliers and customers. (Attachment 2)

3.0 Roles and Responsibilities

The individuals who have a role with DBE compliance on FTA funded TVM procurements are:

3.1 Chief Executive Officer

The President/Chief Executive Officer (CEO) has ultimate responsibility for overall company compliance and shall provide resources to implement and monitor the DBE Corporate Compliance Program and Policy and Code of Conduct. The CEO shall direct the Vice President – Compliance to implement and perform the requirements of this DBE Corporate Compliance Program and Policy. The CEO shall consult with the Vice – President Compliance as to any investigation of any abuse or non-compliance with this policy, the DBE Program, or TVM contract specific DBE requirements.

3.2 Vice President - Compliance

The Vice President – Compliance is responsible for overseeing the implementation and administration of the DBE Corporate Compliance Policy and Program, has access to the CEO, and provides reports to the CEO and other stakeholders as appropriate. The Vice President - Compliance is responsible for conducting an appropriate investigation of each complaint and/or information received concerning DBE compliance, the DBE Program, or this policy. The Vice President - Compliance will report to the CEO of the investigative details, findings, conclusions, and recommendations, including corrective action(s).

3.3 DBE Liaison Officer

The DBELO, is responsible for implementing and monitoring the DBE Program and ensuring that PRL complies with the provisions of the TVM certification issued by FTA. The DBELO has independent access to the CEO concerning the DBE obligations. The DBELO responsibilities are included in the DBE Program plan and updated as needed.

3.4 Employees

PRL employees will follow the Code of Conduct and DBE Corporate Program and Policy and report any concern, suspicious activity, abuse, fraud, or non-compliance with PRL policies. PRL will not take any action against an employee as a result of raising an ethical issue in good faith. Also, PRL does not tolerate any reprisal by any individual against an employee for raising a concern or making a report in good faith. Employees have the option to report such issues through the following means:

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Online Reporting (Can be submitted anonymously):
<https://codeofconduct.tnwreports.com>

By Phone: (309) 675-8662 (English only)
Call Collect Helpline: (770) 582-5275 (Language translation available)

By Email: BusinessPractices@cat.com

By Confidential Fax: (309) 494-4818

3.5 Suppliers Including DBEs

Suppliers and DBEs are an integral partner in PRL's success as a TVM. The Vice President - Compliance will communicate PRL's commitment to comply with DBE requirements with Suppliers and DBEs on an awarded FTA funded TVM procurement.

Suppliers and DBEs may report any concern, suspicious activity, abuse, fraud, or non-compliance with PRL policies to the Vice President - Compliance and or use the same means that employees have as describe in Section 3.4.

4.0 Reporting DBE Participation

It is important that PRL document its efforts to comply with the DBE Program and policy. PRL will provide the FTA with timely and complete DBE reports. The reports include but are not limited to:

- 4.1** By August 1 of each year, the Annual DBE Goal and Methodology.
- 4.2** By June 1 (for the period October 1 – March 31) and December 1 (for the period April 1 – September 30), the Uniform Report of DBE Awards or Commitment and Payments.
- 4.3** By January and July in 2018 and 2019, a report to the FTA regarding PRL's progress towards implementing the DBE Program plan.
- 4.4** As directed by a transit agency under the TVM contract terms and conditions, a report on DBE utilization.

5.0 Records Retention

It is important to document and maintain records on PRL's good faith efforts and DBE participation on TVM contracts. The records shall be maintained according to company records management and retention schedules.

These records will be made available to authorized representatives of the FTA and or transit agencies upon request.

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6.0 Consequences for Noncompliance by Employees and Suppliers

The requirements of the DBE Corporate Compliance Program and Policy will be followed. Employees who deviate from following the policies are subject to discipline up to and including termination. Any exceptions to this DBE Corporate Compliance Program and Policy must be approved by the Vice President - Compliance. Any Supplier who fails to follow the DBE requirements as stated in their contract terms and conditions, including the non-discrimination provisions, could be subject to withholding progress payments, termination of the agreement or legal action. The FTA may also pursue their own civil and criminal penalties and disqualification of the Supplier on TVM federally funded contracts.

7.0 Non-Discrimination

PRL and any Supplier with an agreement with PRL shall not discriminate based on race, color, national origin or sex in performance of a FTA funded TVM procurement. PRL and its Suppliers shall carry out the applicable requirements of 49 CFR Part 26 in the award and administration of any contract with DBE obligations.

8.0 Dissemination of the TVM DBE Corporate Compliance Program and Policy

A copy of the DBE Corporate Compliance Program and Policy will be available to PRL employees via the internal company website raildivision.com. Employees with a direct role in implementing the DBE Program plan will be obligated to acknowledge receipt and understanding of the importance of DBE Corporate Compliance Program and Policy.

The Vice President - Compliance, or its designee, will maintain the record on when the employee with a direct role in implementing the DBE Program reads and acknowledges the DBE Corporate Compliance Program and Policy.

9.0 Attachments

- (1) DBE Program Plan - 2018
- (2) Code of Conduct

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