

RESOLUTION NO. 28-2021

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY ADOPTING CHANGES TO THE LAVTA DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

WHEREAS, the U.S. Department of Transportation and the Federal Transit Administration have periodically changed and updated rules and regulations with regard to Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Programs; and

WHEREAS, the Livermore Amador Valley Transit Authority has prepared a Disadvantaged Business Program in compliance with 49 CFR Part 26, the Department of Transportation Disadvantaged Business Enterprise Rule; and

WHEREAS, the Livermore Amador Valley Transit Authority has added clarification to 49 CFR part 26.47 in regard to committing to completing a “shortfall analysis” when the DBE goal is not met including corrective actions.

WHEREAS, the Livermore Amador Valley Transit Authority has added clarification to 49 CFR part 26.49 adding a statement of LAVTA’s commitment to send FTA Transit Vehicle purchase information within 30 days of making an award.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS THAT THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM FOR THE LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY IS HEREBY ADOPTED.

PASSED AND ADOPTED this 13th day of September 2021.



Karla Brown, Chair

ATTEST:



Michael Tree, Executive Director

LIVERMORE/AMADOR VALLEY TRANSIT AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

*(Adopted September 1999; Revised January 2000;
Updated February 2001; Updated February 2006; Updated June 2009, Updated February 2012,
Updated March 2014, Updated September 2021)*

Section 26.1, 26.23

Objectives/Policy Statement

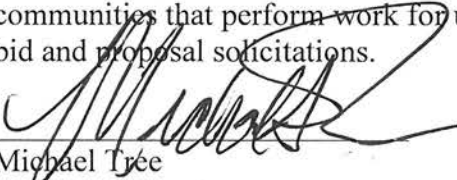
The Livermore/Amador Valley Transit Authority (LAVTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. LAVTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, LAVTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of LAVTA 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 CR 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; and
7. To adhere to the adopted LAVTA purchasing policy principles throughout all aspects of the DBE program.

The Executive Director has assigned the role of DBE Liaison Officer (DBELO) to Tamara Edwards, Director of Finance, tedwards@lavta.org, 925-455-7566. In that capacity, the DBELO 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 LAVTA in its financial assistance agreements with the Department of Transportation.

LAVTA has disseminated this policy statement to its Board of Directors and all the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by including it in all relevant bid and proposal solicitations.


Michael Tree
Executive Director

7/19/21
Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

LAVTA is the recipient of federal transit funds authorized by Congress and administered through the Federal Transit Administration (FTA).

Section 26.5 Definitions

LAVTA will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Nondiscrimination Requirements

LAVTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, LAVTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

LAVTA will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Bidders List: 26.11 (c)

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

LAVTA will collect this information in the following ways:

1. A contract clause requiring prime bidders to report the names, addresses and other information (as needed) of all firms who quote to them on subcontracts, and/or;
2. A notice in solicitations requesting firms quoting on subcontracts to report information directly to the recipient.

Section 26.13 Federal Financial Assistance Agreement Assurance

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

Assurance: 26.13 (a)

LAVTA 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 LAVTA 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.)

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13 (b)

We will 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 shall carry out applicable requirement 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.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

Section 26.25 DBE Liaison Officer (DBELO)

The Executive Director will designate a staff member to be our DBE Liaison Officer:

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that LAVTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the LAVTA Executive Director 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. 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 requests 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 LAVTA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director/Board of Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process in California.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of LAVTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions:

Reviewed all vendors certified under the Federal Reserve Board of Governors Statistical Release entitled "Minority-Owned Banks" dated September 30, 2005 by using their website <http://www.federalreserve.gov/releases/mob/current/default.htm>. To date we have not identified any financial institutions owned and controlled by socially and economically disadvantaged individuals in our community. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment

LAVTA 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 15 working days from the receipt of each payment the prime contractor receives from LAVTA. The prime contractor agrees further to return retainage payments to each subcontractor within 15 working days after the subcontractor's work is satisfactorily complete. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following the written approval of LAVTA. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

LAVTA uses the California Unified Certification Process (CUCP) to identify all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is updated by the CUCP on at least an annual basis. LAVTA makes the directory available as follows:

Citation on LAVTA site: <http://www.wheelsbus.com/procurement/dbpolicy.html>.

The directory may be access directly at: http://www.dot.ca.gov/hq/bep/dbe_query.htm.

Section 26.33 Overconcentration

LAVTA has not identified an overconcentration of DBE firms in any type of work.

Section 26.35 Business Development Programs

LAVTA has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

LAVTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

All prime contractors shall submit monthly progress reports on DBE utilization to LAVTA. Specifically, this report must provide a running tally of actual payments made to DBE firms. (DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.) Failure to submit these reports in a timely manner shall result in a penalty of \$10 per day, per report.

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. In the event of non-compliance with the DBE regulation by a participant in our procurement activities any of the following administrative remedies may be used:
 - a. Liquidated damage;
 - b. Suspension of payment to the contractor of any monies held by LAVTA as retained on the contract;
 - c. The denial to the contractor of right to participate in future LAVTA contracts for a specified time;
 - d. Contract termination.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award will actually be performed by DBEs. This will be accomplished by a review of invoices submitted from contractors that stipulate the DBE portion of the contract actually paid out during the invoice cycle. If DBE sub-contractors

- are used, a specific citation on the invoice detailing the amount and date of payment to the sub-contractor will be required from the Prime contractor.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Fostering Small Business Participation

The small business element is intended to facilitate compliance with the two objectives in 49 CFR 26.51: 1) To meet the maximum feasible portion of the goal by using race-neutral means of obtaining DBE participation and 2) to establish DBE contract goals to meet any portion of the goal that LAVTA is unable to meet using race-neutral methods alone. LAVTA will implement the small business element within nine months of receiving approval from FTA.

An important part of LAVTA's small business element is its outreach activities. These outreach efforts include active, effective steps to increase small business participation, such as soliciting bids/proposals from DBE's and SBE's, responding to requests for information, participating in prebid and preproposal meetings, and participating at outreach and training events for DBE's and small businesses. As time and resources allow LAVTA will participate in outreach and informational events for DBE's and small businesses that may be coordinate with other U.S. DOT recipients, federal agencies, or local organizations. Discussed during these outreach events will be procedures on how to do business with LAVTA, how to become certified as a DBE or SBE, LAVTA's DEBE Program requirements and other topics of interest to DBE's and small businesses.

Other strategies that LAVTA will consider as part of its small business element include unbundling contracts and setting SBE contract specific goals when subcontracting opportunities are available.

Any firm that wishes to participate in the LAVTA Small Business Program must be an existing, for-profit, small business as defined by the SBA standards and 49 CFR Part 26. To avoid fraud a firm's small business status will be verified when LAVTA utilizes SBE contract goals on a project. A currently certified DBE is presumed eligible to participate in the small business element of LAVTA's DBE program. LAVTA will require that all SBE's and any DBE's not certified by the CUCP provide documentation to verify their certification status. LAVTA may require SBE's to submit additional documents, as necessary, to verify their eligibility.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 2 to this program. This section of the program will be updated as required.

In accordance with Section 26.45(f) LAVTA will submit its overall goal to DOT on August 1 of each year, except in cases where we submit a project goal. Project goals will be submitted at a time determined by the FTA Administrator. Before establishing the overall goal each year, LAVTA will consult with appropriate constituent groups representing minority, women and

general contractors' groups, community organizations and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and LAVTA'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 goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at LAVTA's administrative offices for 30 days following the date of the notice, and informing the public that we and DOT will accept comments on the goals for 45 days from the date of the notice. At a minimum this notice will be issued in newspapers and trade publications. Normally, we will issue this notice by June 1 of each year. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. 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.

Section 26.47 Goal Shortfall Analysis

If LAVTA's awards and commitments, as shown on its Uniform Report of Awards or Commitments and Payments at the end of the three-year goal period are less than the overall goal applicable to that period, LAVTA shall Analyze in detail the reasons for the difference between the overall goal and LAVTA's awards and commitments in that period. Additionally, LAVTA will establish specific steps and milestones to correct the problems identified. The authority will retain the analysis and corrective action in its records, in the FTA, DBE file on the shared drive for seven years and make it available to the FTA upon request.

Section 26.49 Transit Vehicle Manufacturers Goals

LAVTA will require 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. The DBELO will submit the TVM certification within 30 days of the contract award. Alternatively, LAVTA 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.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 3 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

LAVTA will use contract goals to meet any portion of the overall goal LAVTA 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 will establish 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 express our contract goals as a percentage of the total amount of a DOT-assisted contract or the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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. See Attachment 4 for Good Faith Effort forms. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible.

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

Information to be submitted (26.53(b))

LAVTA treats bidder/offeror's compliance with good faith efforts' requirements as a matter of responsiveness or 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 10 days of being informed by LAVTA that it is not responsive 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: Legal Counsel, 1362 Rutan Court #100, Livermore, CA 94550, (925) 455-7555. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror 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 so. We 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 Department of Transportation.

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

We 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. We 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, 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. 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 contracting officer may issue a termination for default proceeding.

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 LAVTA 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 ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be 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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

LAVTA will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 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.

LAVTA uses DBE vendors certified by the Unified California Certification Process of the state of California. Their certification application form and documentation requirements can be found at the following World Wide Web address: <http://www.dot.ca.gov/hq/bep/ucp.htm>

For information about the certification process or to apply for certification, firms should use the World Wide Web to locate the nearest certifying agency. The website address to obtain the most recent roster of certifying agencies can be found at:

http://www.dot.ca.gov/hq/bep/Roster_of_Certifying_Agencies_09-16-03.doc

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

LAVTA uses the statewide Unified Certification Program. As such, LAVTA does not provide certification procedures itself. Interested parties are encouraged to use the World Wide Web to obtain contact information on the most recent roster of certifying agencies.

http://www.dot.ca.gov/hq/bep/Roster_of_Certifying_Agencies_09-16-03.doc

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

LAVTA relies on the state-wide CUCP DBE certification program, and currently does not recertify or make certification decisions.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law.

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 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 of any authorized representative of LAVTA or DOT. This reporting requirement also extends to any certified DBE subcontractor. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

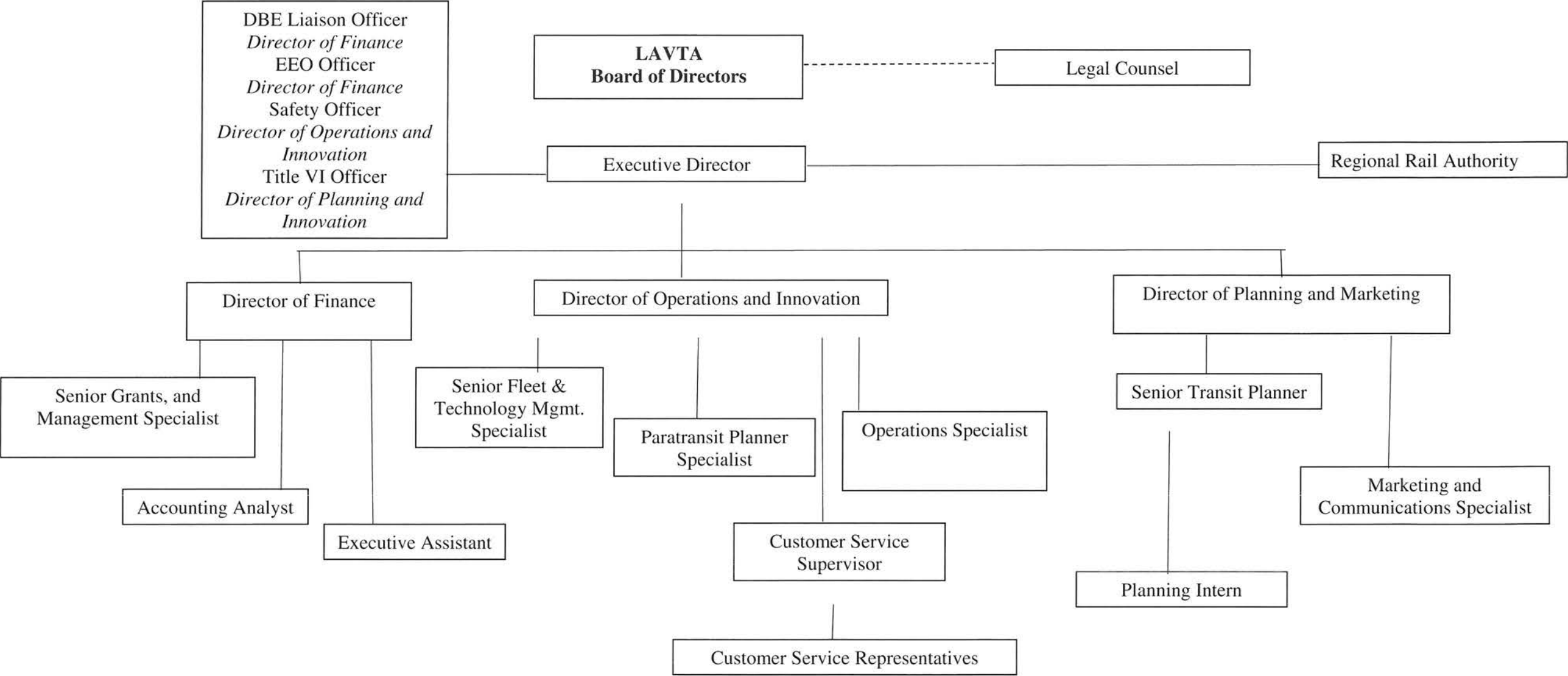
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	Overall Goal Calculation
Attachment 3	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 4	Form 1 & 2 for Demonstration of Good Faith Efforts

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
Attachment 1

Organizational Chart



Attachment 2

Section 26.45: Overall Goal Calculation

Amount of Goal

Pursuant to 49 CFR 26.45, LAVTA will establish overall goal (either annual or project specific) for DBE participation in DOT-assisted contracts.

Methodology used to Calculate Overall Goal

The following is a summary of the method we used to calculate these goals:

Determining a Base Figure

LAVTA will determine a base figure for the relative availability of DBEs on any project by using one of the following methods (method may vary by project):

1. *DBE Directories and Census Bureau Data.* Determine the number of ready willing and able DBEs in our market from the regional directory. Using the Census Bureau's County Business Pattern data base, determine the number of all ready, willing and able businesses in our market that perform work in the same SIC codes. Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in our market.
2. *A bidders list.* Determine the number of DBEs that have bid or quoted on our DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in the market.
3. *Use of a goal of another DOT recipient.* If another DOT recipient in the same or substantially similar market has set an overall goal in compliance with this rule, we may use that goal as a base figure for our goal.
4. *Alternative methods.* A methodology not stated in the rule that provides a goal that is rationally related to the relative availability of DBEs in our market.

Adjusting a Base Figure

As required in the rule, LAVTA will adjust the base figure so that it reflects as accurately as possible the DBE participation we can expect in the absence of discrimination. Possible information used to adjust the based figure is:

1. Demonstrated evidence of DBE capacity to perform work on LAVTA's project;
2. Real market conditions;
3. Disparity studies conducted within the jurisdiction; and
4. Other relevant factors.

Attachment 3

Section 26.51: Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

1. Ensuring the inclusion of DBEs, and other small businesses on recipient mailing lists for bidders;
2. Ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;
3. Ensuring distribution of our DBE directory through electronic means to the widest feasible audience of potential prime contractors; and
4. Providing assistance in overcoming limitations such as inability to obtain bonding or finances (e.g. by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids).

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Attachment 4

Forms 1 & 2 for Demonstration of Good Faith Efforts

*Forms 1 and 2 will be placed in solicitations where a DBE goal has been set for the project.
Forms 1 and 2 will not be incorporated into projects that carry no DBE participation requirement.*

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ the bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ the bidder/offeror (if unable to meet the DBE goal of ____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts (Documentation must be attached to Form 1).

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offer's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)