

STAFF REPORT

SUBJECT: Disadvantaged Business Enterprise (DBE) 3-Year Goal Establishment (2024-2026)

FROM: Tamara Edwards, Disadvantaged Business Enterprise Liaison Officer

DATE: July 10, 2023

Action Requested

Approve LAVTA's updated 3-year Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Years 2024-2026 Federal Funding.

Background

Pursuant to 49 CFR Part 26, LAVTA is required to submit an overall DBE goal when it anticipates awarding at least \$250,000 in FTA funded prime contracts in a Federal fiscal year, excluding transit vehicle purchases.

Discussion

The overall goal spanning the next three federal fiscal years of funding is 1%, and may be adjusted annually based upon differing circumstances. Establishing an overall DBE goal is a multi-step process and the methodology used is consistent with 49 CFR Part 26.

Determining a Base Figure

According to LAVTA's DBE policy, the agency may 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 NAICS 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.

The recommended three year goal for FYs 2024-2026 was determined using method number 1 above. The goal has been published for public comment for the required 30 days, and staff held three public in person meetings to share the goal setting methodology. After the goal was released for public comment staff received one (1) comment, questioning the low goal. However, after staff shared the various projects anticipated for the next three years, and the availability of DBE's for each project, as well as how each project was weighted based on funding. It should be noted that 60% of LAVTA's anticipated Federal Funding (not including funding for buses) over the next three years is expected to be spent on one item that currently does not have any DBE manufacturer's or distributors. Additional federal dollars may become available during this three year period and as new information becomes available, the overall DBE goal may have to be revised accordingly on an annual basis.

Recommendation

The Finance and Administration Committee recommends that the Board adopt the three-year DBE goal of 1% for Federal Fiscal Years 2024-2026.

Attachments:

1. DBE Goals FFY24, 25, & 26

Approved: _____



Livermore Amador Valley Transportation Authority

**FFY 2024 through FFY2026
Disadvantaged Business Enterprise
Overall Goal and Goal Setting Methodology
(DBE Goal Report)**

Adopted by the LAVTA Board of Directors on July 10, 2023

**Submitted to the
U.S. Department of Transportation
Federal Transit Administration
Region IX
July 11, 2023**

Disadvantaged Business Enterprise (DBE) Goal for Federal Fiscal Years 2024 through 2026

Summary

The Livermore Amador Valley Transit Authority (LAVTA) has developed a 1% overall Disadvantaged Business Enterprise (DBE) goal applicable to Federal Fiscal Year (FFY) 2023/24, 2024/25, and 2025/26 for contracting opportunities assisted by the Federal Transit Administration (FTA) in accordance with revisions to 49 Code of Federal Regulations (CFR) Part 26 published in the Federal Register on October 2, 2014.

The goal is applicable to a total of \$10,832,673 of FTA dollars that are budgeted for 17 contracts anticipated to be awarded from October 1, 2023, through September 30, 2026. It is understood that in the event of changed circumstances, LAVTA will evaluate such changes to determine whether the present goal continues to be realistic or whether mid-course adjustments will be necessary.

The DBE goals developed for FTA-assisted contracts identify the relative availability of DBEs, based on evidence of ready, willing and able DBEs in relationship to all comparable businesses that are likely to be available to compete for the Authority's FTA-assisted contracts. The three-year overall goal reflects the Authority's determination of the level of DBE participation that would be expected absent the effects of discrimination.

The steps taken in the development of the Authority's goal are in accordance with 49 CFR Part 26, issued by the U.S. Department of Transportation (U.S. DOT). A narrative description accompanied by tables and calculations is contained in this report to provide a clear explanation of how the Authority developed its DBE goal for FFY 2023/2024 through 2025/2026.

Development of DBE Goal

As an eligible recipient of federal funding, LAVTA is required to comply with 49 CFR Part 26, which states that grantees must establish and implement a DBE program and set triennial DBE participation goals.

The methodology to calculate the DBE participation goal is a two-step process described in 49 CFR part 26. Step-One of the methodology establishes a base figure for the anticipated contracts to be awarded in the period. The base figure is derived from the relative availability of DBE's that are ready, willing, and able to participate on these anticipated contracts. Step-Two relies on LAVTA's knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed. The calculation using the two-step methodology results in a DBE Goal of 1 percent for FFY24-26. This methodology is outlined below.

Outreach/public comment period

In accordance with the public participation requirements of 49 CFR Part 26.45, LAVTA published the Disadvantaged Business Enterprise (DBE) Goal of 1 percent for a 30-day review/45-day public comment period. LAVTA posted the notice on its website (attachment 1).

The legal notice informed the public that information on the proposed goal and methodology is available for inspection during normal business hours at LAVTA's office for thirty days from the date of publication. The notice also advised that LAVTA and U.S. DOT would accept public comments on the proposed goal and methodology for a period of forty-five days from the date of publication. At the conclusion of the public review and comment period LAVTA received one comment requesting additional information regarding development of the proposed goal and no comments about the goal-setting methodology. The commenter also asked for information regarding LAVTA's outreach efforts on non-Federally funded projects.

Outreach results

LAVTA held three in person outreach events on April 20, 2023, April 21, 2023 and May 2, 2023 in order to consult with minority, women's, contractors groups and DBE's regarding this goal and to help create a level playing field on which DBEs can compete fairly; to enhance outreach and communication efforts with these firms; to provide appropriate assistance and information for participation in U.S. DOT- assisted contracts and other contracts; and to develop joint resources among recipients. LAVTA sent invitation to a number of groups that represent various race/gender specific businesses as well as all DBE's within the area (attachment 2). LAVTA had 1 attendee, and zero questions about the goal or the goal setting methodology. The questions centered around how to register with LAVTA as a vendor.

LAVTA sent invitations to all DBE's listed on the Caltrans website that do business within LAVTA's market area. LAVTA received responses from 1 DBE requesting additional information on the proposed goal and the calculation. Staff sent a copy of the calculation including all projects, the number of DBE's available in each NAICS code, and the number of total firms available for each project. Staff also shared that while the overall goal was low, some of the projects contained within the overall goal had much higher individual goals that LAVTA will strive to meet.

LAVTA's public participation and outreach activities are designed to broaden awareness of LAVTA's DBE program beyond federal dollars. Furthermore, the measures described in 49 CFR Part 26.51, focusing on race-neutral means will be actively pursued, and LAVTA will encourage its contractors to also make similar outreach efforts to include DBE participation in subcontracting opportunities. In addition, LAVTA will continue to organize and offer information programs for meeting DBE eligibility requirements, familiarize potential contractors with LAVTA procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in all LAVTA contracting activities.

Although LAVTA has had difficulty reaching its DBE goal in the past LAVTA will still set the goal to be reached by race/gender neutral means. The reason for this is the small number of available DBE firms who provide the type of services that LAVTA is receiving Federal Funds for, using race/gender conscious means would provide the same results.

The Authority has also focused on expanding race/gender-neutral outreach through participation in the “Business Outreach Committee” (BOC), a consortium of 26 Bay Area transit and transportation agencies formed in an effort to maximize outreach efforts. The BOC agencies include the following: Alameda-Contra Costa Transit District, Alameda County Transportation Commission, Bay Area Rapid Transit, California Department of Transportation, California High Speed Rail Authority, Central Contra Costa Transit Authority, City of Rio Vista, City of Santa Rosa, Golden Gate Bridge, Highway and Transportation District, Livermore Amador Valley Transit Authority, Marin Transit, Metropolitan Transportation Commission, Napa Valley Transportation Authority, Peninsula Corridor Joint Powers Board, San Francisco Bay Area Water Emergency Transit Authority, San Francisco County Transportation Authority, San Francisco Municipal Transportation Agency, San Mateo County Transit District, Santa Clara Valley Transportation Authority, Santa Cruz Metropolitan Transit District, Solano County Transit, Sonoma County Department of Transportation and Public Works, Sonoma-Marín Area Rail Transit District, Transbay Joint Powers Authority, Tri Delta Transit, and Western Contra Costa Transit Authority. The BOC publishes a quarterly “Contracting Opportunities” newsletter that features contracts, contacts, resources, and guidance for small businesses and DBEs.

Although LAVTA initially received a question regarding the goal and how it was calculated, the information regarding 60% of the Federal Funds for the period will be spent a product that does not have a DBE manufacturer or supplier yet, and after staff shared the calculations for the overall goal the commenter was satisfied with the information provided. Therefore, based on the outreach results LAVTA did not change the goal as presented.

Projection of percentage of three-year overall DBE goal to be achieved through race-neutral measures

The U.S. DOT regulations require that the maximum feasible portion of the DBE overall goal be met by using race-neutral methods. Race-neutral methods include efforts made to assure that bidding and contracting requirements facilitate participation by DBEs and other small businesses, such as unbundling large contracts to make them more accessible, encouraging prime contractors to subcontract portions of the work, and providing, technical assistance, outreach and communications programs. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, a DBE is awarded a subcontract on a prime contract that does not carry a DBE goal, or a DBE wins a contract, even if there is a DBE, goals, from a prime contractor that did not consider its DBE status in making the award.

Due to the emphasis placed on race-neutral methods and the small dollar amounts of projected new formal contracts with subcontracting opportunities, LAVTA anticipates setting no contract-specific DBE goals on new contracts to be awarded in FFY2024 through FFY2026.

In addition, LAVTA will focus on developing, refining and implementing race-neutral methods for facilitating DBE participation by advising prospective contractors of the areas for possible subcontracting and the availability of ready, willing and able subcontractors, including DBE firms, to perform such work. LAVTA will continue to solicit DBE participation on an ongoing basis, use DBE firms that have successfully completed prior projects, encourage eligible firms to become certified as DBEs, encourage DBE certified firms to maintain their certifications, assist with access and distribution of the California UCP DBE database, work with the California UCP Executive Committee to refine the DBE certification and annual review processes, and provide requested technical assistance and related services when feasible.

Race-neutral measures will comprise 100% of the total contracting opportunities through various types of contracts, including construction, professional services, procurement of materials, supplies and equipment, and other services. LAVTA will monitor carefully its progress during the course of each year and will consider whether it will establish appropriate contract-specific goals if other race-neutral methods do not appear sufficient to achieve the three-year overall DBE participation goal. All contracts that have DBE commitments will be monitored for compliance.

Compliance with California Proposition 209

The three-year overall DBE goal complies with the California Civil Right Initiative, Proposition 2009, in that any continuing race-conscious measures for new contracts, or contracts in progress, apply only to U.S. DOT-assisted contracts.

The race-neutral elements of LAVTA's DBE program are applicable to all third-party contracts, regardless of funding source, in a manner that is consistent with Proposition 209. By this means, the administration of LAVTA's contracts to include the participation of DBEs on a nondiscriminatory basis is preserved.

FFY 2024-2026

Disadvantaged Business Enterprise (DBE) Goal Methodology

The methodology to calculate an agency's DBE goal is a two-step process described in 49CFR Part 26. Step-one of the methodology establishes a base figure for new federally funded contracts anticipated to be awarded in the upcoming three Federal Fiscal Years (October 1-September 30). This calculation has been done for contracts anticipated to be awarded between October 1, 2024 and September 30, 2026.

A number of options in calculating the base figure are available. LAVTA does not have a comprehensive bidders list that includes all DBEs and non-DBEs that submitted bids/proposals on prior contracts or subcontracts. LAVTA does however, have a vendors list comprised of vendors who have contacted LAVTA in the past regarding potential future opportunities. This list specifies whether or not the potential bidder is or is not a DBE. Staff reviewed this list and

determined that data was not comprehensive enough to solely determine the relative availability of DBE's in its local market area.

Another option is to use the goal of another U.S. DOT recipient for the goal-setting process; however, while LAVTA has considered doing this the decision was made to use a different method as LAVTA's contracting opportunities do not closely mirror those of another agency.

Therefore, LAVTA chose to calculate the DBE goal in the following manner:

The base figure is derived from the relative availability of DBEs that are presumed ready, willing, and able to participate on these anticipated contracts. Step-Two relies on the agency's knowledge of its contracting markets and previous history of DBE participation to determine if an adjustment to the base figure is needed. The calculation using the two-step methodology results in a DBE goal of 1 percent for FFY2024-26 for LAVTA. This methodology is outlined below.

RELEVANT AVAILABLE EVIDENCE

The Authority examined all evidence in its jurisdiction to determine which sources might be considered for its DBE goal-setting methodology in the Step One and Step Two process:

DATA CONSULTED

Census Bureau's County Business Pattern (CBP) Database

The Authority used the Census Bureau's CBP database, updated as of April 2022, to obtain the number of all firms (DBEs and non-DBEs) ready, willing and able to bid for the Authority's FTA-assisted contracts. This data is used in Step One of the goal-setting process.

California Unified Certification Program (CUCP) Database

The Authority used the CUCP database to determine the number of certified DBEs ready, willing and able to bid for the Authority's FTA-assisted contracts. This data is used in Step One of the goal-setting process.

Actual DBE Participation in Past Race/Gender-Neutral Contracts

Actual DBE participation in race/gender-neutral contracts in past years as well as other applicable analysis was used to determine whether adjustment to the Step One Base Figure is necessary. This data was used in Step Two of the goal-setting process.

Data from Disparity Studies Performed by Other Agencies

Several Bay Area transit agencies [San Mateo County Transit District (SamTrans)/ Peninsula Corridor Joint Powers Board (Caltrain), Bay Area Rapid Transit District (BART), Santa Clara Valley Transportation Authority (VTA) and the California Department of Transportation (Caltrans)]; have completed disparity studies in the past. The local market areas of some of these agencies do overlap with that of the Authority. However, the types of contracts and the size of contracts led by the aforementioned agencies are not similar to LAVTA's and therefore limit the Authority's use in order to make a Step One Base Figure or Step Two adjustment.

Goals of Other U.S. DOT Recipients

The Authority did not consider the goals of other U.S. DOT recipients due to the fact other recipients do not have substantially similar contracting opportunities and/or marketplace as the Authority.

Metropolitan Statistical Areas

The Consolidated Metropolitan Statistical Area (CMSA) which closely matches the Authority's marketplace is San Francisco-Oakland-San Jose. However, this area does not cover all the counties that are in the Authority's marketplace, and therefore, would be an incomplete source for LAVTA's goal-setting process. The Census Bureau's CBP database is a more appropriate source to obtain data on the specific counties in the marketplace as discussed above.

Sources from Organizations and Institutions

LAVTA did not receive information about past discrimination in public contracting; discrimination in private contracting; discrimination in credit, bonding or insurance; data on employment, self-employment, training or union apprenticeship programs; and/or data on firm information that could be used to make an adjustment to the base figure in Step Two of the goalsetting process.

Step-One Process: Development of Base Figure

The initial step in developing a DBE Goal of 1 percent was to determine the market area for consultants who have demonstrated an interest or are anticipated to participate in LAVTA contracts.

The Authority determined the local market area based on the area in which the contractors and subcontractors on the Authority's Bidders List are located. These firms are located in the counties of Alameda, Santa Clara, San Mateo, Contra Costa, San Joaquin, Stanislaus, and Amador.

The Authority will use these counties to determine the number of DBEs and all firms in its local market area.

The next stage of the methodology is to determine the amount of each contract as part of the whole FTA program for these fiscal years, which are then weighted according to their percentage of the total amount of the contracting opportunities outlined in 1A.

The projects are analyzed to determine what type of contracting work is anticipated and these activities are matched with the respective North American Industry Classification System (NAICS) codes, which are used to identify firms in the California Unified Certification Program (CUCP) SBE and U.S. Census Bureau's County Business Patterns Database. The NAICS code for each project is listed below:

NAICS Code	Project
485991	ADA Paratransit FY24
485991	ADA Paratransit FY25
485991	ADA Paratransit FY26
238390	Rehab passenger shade structure
237310	repave/restripe parking lot
238210	replace security lighting
561621	replace security cameras
337127	replace passenger amenities
236210	Shop Bay Makeover
541330	Design of bus hubs
238110	Bus hub construction
337127	Bus Hub Furnishings
236210	Hydrogen Fueling station construction
23170	Hydrogen Fueling station h2 sensors
23170	Hydrogen Fueling station gas detection
238210	Hydrogen Fueling station electrical
23170	Hydrogen mobile fueler

Both databases are searched for the number of firms in the relevant NAICS codes in the appropriate market areas. The ratio for DBE firms to non-DBE firms is then calculated by dividing the number of certified DBE firms ready, willing, and able to work in the appropriate market area, according to the CUCP database, by the total number of firms found in the same market area according to the U.S. Census Database. This is performed for each county and each type of activity shown in figure 1B.

Finally, the Step-One Base Figure results from multiplying the DBE ratios for each project by the corresponding weights, and summing the results for each activity. The calculation of the Step-One Base Figure is shown in figure 1C.

The Step-One Base Figure, weighted by type of work to be performed, is 1.33 percent.

Step-Two Process: Adjustment to the Base Figure

The purpose of the analysis in Step-Two is to make a determination based on relevant evidence available to LAVTA if any adjustments to the Step-One Base Figure are justified. LAVTA's DBE participation history can assist in determining whether an adjustment to the Step-One Base Figure is warranted.

LAVTA decided not to adjust this figure based on the LAVTA percent DBE participation that LAVTA has received over the past three years.

Calculations:

FFY 2023/2024- 2025/2026 Base Figure: 1.33% Historical Median Past Participation (Median over the last three years: 53.85% Adjustment: (base figure 1.33%) + (historical median past participation 53.85%) = $55.18 \div 2 = 27.59\%$, Rounded to 28%. However, based on the types of contracts awarded over the last three years, and the types of contracts to be awarded over the next three years the step-two adjustment is not applicable as the types of past contracts were primarily operating and the ones for FFY's 2024-2026 are primarily capital.

Conclusion

The Disadvantage Business Enterprise (DBE) Goal for FFY 2024-2026 is 1 percent and is a 100% race neutral goal.

FFY 2024-2026

1A. FTA Assisted Contract List:

NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
485991	ADA Paratransit FY24	\$434,985	0.0402
485991	ADA Paratransit FY25	\$448,035	0.0414
485991	ADA Paratransit FY26	\$461,476	0.0426
238390	Rehab passenger shade structure	\$100,000	0.0092
237310	repave/restripe parking lot	\$72,675	0.0067
238210	replace security lighting	\$35,643	0.0033
561621	replace security cameras	\$32,000	0.0030
337127	replace passenger amenities	\$32,000	0.0030
236210	Shop Bay Makeover	\$530,159	0.0489
541330	Design of bus hubs	\$182,000	0.0168
238110	Bus hub construction	\$1,366,000	0.1261
337127	Bus Hub Furnishings	\$452,000	0.0417
236210	Hydrogen Fueling station construction	\$47,600	0.0044
23170	Hydrogen Fueling station h2 sensors	\$50,400	0.0047
23170	Hydrogen Fueling station gas detection	\$23,100	0.0021
238210	Hydrogen Fueling station electrical	\$12,600	0.0012
23170	Hydrogen mobile fueler	\$6,552,000	0.6048
Total FTA-Assisted Contract Funds		\$10,832,673.62	1

1B. Determine the relative availability of DBEs b NAICS Code:

NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability	
485991	ADA Paratransit FY24	1	62	0.0161	
485991	ADA Paratransit FY25	1	62	0.0161	
485991	ADA Paratransit FY26	1	62	0.0161	
238390	Rehab passenger shade structure	1	155	0.0065	
237310	repave/restripe parking lot	27	56	0.4821	
238210	replace security lighting	19	1491	0.0127	
561621	replace security cameras	2	144	0.0139	
337127	replace passenger amenities	0	4	0.0000	
236210	Shop Bay Makeover	6	52	0.1154	
541330	Design of bus hubs	48	1839	0.0261	
238110	Bus hub construction	15	1442	0.0104	
337127	Bus Hub Furnishings	0	4	0.0000	
236210	Hydrogen Fueling station construction	6	52	0.1154	
23170	Hydrogen Fueling station h2 sensors	0	195	0.0000	
23170	Hydrogen Fueling station gas detection	0	195	0.0000	
238210	Hydrogen Fueling station electrical	19	1491	0.0127	
23170	Hydrogen mobile fueler	0	195	0.0000	
Combined Totals		146	7501	0.0195	Overall availability of DBEs

1C. (Weight) x (Availability) = Weighted Base Figure

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
485991	ADA Paratransit FY24	0.04015	x	0.01613	0.0006
485991	ADA Paratransit FY25	0.04136	x	0.01613	0.0007
485991	ADA Paratransit FY26	0.04260	x	0.01613	0.0007
238390	Rehab passenger shade structure	0.00923	x	0.00645	0.0001
237310	repave/restripe parking lot	0.00671	x	0.48214	0.0032
238210	replace security lighting	0.00329	x	0.01274	0.0000
561621	replace security cameras	0.00295	x	0.01389	0.0000

Attachment 1

337127	replace passenger amenities	0.00295	x	0.00000	0.0000
238110	Shop Bay Makeover	0.04894	x	0.11538	0.0056
941330	Design of bus hubs	0.01680	x	0.02610	0.0004
238110	Bus hub construction	0.12610	x	0.01040	0.0013
337127	Bus Hub Furnishings	0.04173	x	0.00000	0.0000
238110	Hydrogen Fueling station construction	0.00439	x	0.11538	0.0005
23170	Hydrogen Fueling station h2 sensors	0.00465	x	0.00000	0.0000
23170	Hydrogen Fueling station gas detection	0.00213	x	0.00000	0.0000
238210	Hydrogen Fueling station electrical	0.00116	x	0.01274	0.0000
23170	Hydrogen mobile fueler	0.60484	x	0.00000	0.0000
				Total	0.0133
				Expressed as a % (*100)	1.33%
				Rounded, Weighted Base Figure:	1%
				Adjusted base figure based on past participation	1.33%