

STAFF REPORT

SUBJECT: DBE Policy Update
FROM: Tamara Edwards, Director of Finance
DATE: October 7, 2024

Action Requested

The Finance and Administration Committee recommends that the Board of Directors approve changes to LAVTA’s Disadvantaged Business Enterprise (DBE) Program and authorize submittal of the revised document to the Federal Transit Administration (FTA) by October 9, 2024.

Background

The U.S. Department of Transportation (U.S. DOT) has revised Title 49 of the Code of Federal Regulations (CFR) Part 26, *Participation by Disadvantaged Business Enterprise in Department of Transportation Financial Assistance Program*, effective May 9, 2024. These revisions impact the Authority’s DBE Program, including:

- Tiered program requirements for recipients that receive planning, capital, or operating assistance that cumulatively exceeds or is less than \$670,000;
- Additional bidder’s list information to capture race and gender, zip code, and applicable North American Industry Classification System (NAICS) code(s) to each scope of work items;
- Monitoring and oversight requirements;
- Prompt Payment and Return of Retainage requirements;
- Transit Vehicle Manufacturer (TVM) definition and process for establishing DBE Project Goals to meet TVM requirement;
- Procedures to Good Faith Efforts (GFE) on design-build contracts with goals to require a DBE Open Ended Performance Plan;
- New “Distributor” definition for counting DBE credit;
- Business Size cap increased to \$30.72 million;
- Increase in the Personal Net Worth (PNW) cap to \$2.047 million; and
- Counting DBE Participation after Decertification.

Discussion

On July 21, 2022, the Biden-Harris Administration and U.S. DOT issued a Notice of Proposed Rulemaking (NPRM) to modernize the DBE and Airport Concession DBE (ACDBE) program regulations. The intent of the NPRM was to improve the DBE/ACDBE Program by optimizing performance, growing capacity and owner wealth, reducing burdens on firms and recipients,

improving operational cohesiveness, strengthening monitoring and oversight requirements, updating certification provisions, and making technical corrections to provide clarification of the rules to recipients, program applicants, and participants.

On April 9, 2024, U.S. DOT announced the Final Rule with instructions for recipients to implement the changes, effective May 9, 2024. In addition, U.S. DOT issued Part 26 Implementation Guidance, a List of New Rule Timelines, and have offered training sessions in all revised areas of 49 C.F.R. Part 26 in an effort to assist recipients in updating their DBE Program.

LAVTA is a member of the Bay Area Business Outreach Committee (BOC) made up of Civil Rights officers from FTA, FHWA, and FAA-funded agencies within the Bay Area. The BOC met on four occasions to go over how the new regulations affected the various agencies and what needed to be added to programs to meet the new requirements.

Staff has updated the DBE Program to reflect these changes in the following areas:

Tiered Program (§ 26.21)

Prior to the Final Rule, recipients of federal assistance exceeding \$250,000 per federal fiscal year were required to have a DBE program in full conformity with 49 CFR Part 26. Under the Final Rule, recipients of planning, capital, or operating assistance that cumulatively exceeds \$670,000 in prime contract awards (excluding transit vehicle purchases) per federal fiscal year must develop a Tier I program that complies with all Part 26 requirements.

Tier II recipients that reasonably anticipate awarding prime contracts that are cumulatively less than \$670,000 in a federal fiscal year must develop a Tier II program that complies with the following requirements: reporting and recordkeeping (§26.11), contract assurance (§26.13), policy statement and dissemination (§26.23), SBE program element (§26.39), and TVM procurements (§26.49). The intent of the new tiered approach is to expand the DBE program requirements to all FTA recipients, reduce administrative burden on smaller recipients, and improve the understanding of the program's impact to include data that may be used to inform future policymaking.

Each federal fiscal year, staff will assess whether LAVTA is a Tier I or Tier II recipient. For federal fiscal year 2024/2025, the Authority is considered a Tier I and will enforce all requirements applicable to Tier I outlined in the DBE Program.

Bidders List (§ 26.11)

Prior to the Final Rule, recipients were required to gather the following bidders list information: 1) firm name; 2) firm address; 3) firm's status as a DBE or non-DBE; 4) age of the firm; and 5) annual gross receipts of the firm. Recipients are now required to capture additional data from bidders/proposers responding to federally assisted procurements to compile as accurate data as possible about the universe of all DBE and non-DBE contractors and subcontractors who seek to work on federally-assisted contracts. Additional reporting requirements include race and gender information for the majority owner, firm zip code, and applicable NAICS codes to each scope of work proposed on the bid/proposal from all owners.

The required bidders list information must be submitted with bids or initial responses to negotiated procurements.

Recipients must enter bidders list data in a centralized, comprehensive, and searchable database developed by U.S. DOT no later than December 1 following the fiscal year in which the relevant contract was awarded. For design-build contracts where subcontracts will be solicited throughout the contract period as defined in a contractor's Open-Ended DBE Performance Plan, the data must be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The Authority has updated its *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* and *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* used to collect bidders list data specific for each solicitation.

Monitoring and Oversight Requirement (§ 26.37)

DBE participation in contracts falls on the responsibility of all Authority staff involved in the contract process, including the DBE officer who will effectively monitor DBE participation throughout the contract's lifecycle, from contract initiation to completion. Monitoring and oversight mechanisms ensure DBEs awarded contracts are actually utilized on the contract, are promptly paid, and perform a commercially useful function to count towards contract goals or annual goals.

Additional language was added to this section of the regulations to effectively implement running tally mechanisms. With respect to achieving overall goals, a running tally must be used that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether current implementation of contract goals is projected to be sufficient to meet the DBE annual goal. This mechanism should inform decisions to implement goals on contracts to be advertised according to established contract goal-setting processes. The Authority will keep a running tally of DBE awards/commitments to determine whether current implementation of contract goals is projected to be sufficient to meet annual DBE goals.

In addition, with respect to each DBE commitment, the Final Rule requires recipients to use a running tally mechanism that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track to meet its DBE commitment and whether any projected shortfall exists that requires the prime contractor to make good faith efforts to meet the contract goal pursuant to § 26.53(g). The Authority will keep a running tally to meet these requirements.

Prompt Payment and Return of Retainage (§ 26.29)

Prompt payment and the return of retainage for satisfactory completion of work under federal regulations is 30 days. State laws that require a shorter time frame will prevail over the federal 30-day requirement. Accordingly, the Authority will comply with California's shorter prompt payment and return of retainage time frames, as applicable.

The Final Rule requires recipients to state the mechanisms used to proactively monitor a prime contractor's compliance with federal subcontractor prompt payment and return of retainage requirements in their DBE programs. The Final Rule further clarifies that the prompt payment and return of retainage requirements in Part 26 also apply to all lower-tier subcontractors, DBEs and non-DBEs.

Consistent with the federal regulation, language has been added to the DBE Program and will be incorporated into solicitation documents requiring contractors to include language in their subcontracts that stipulates the contractor and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes, and providing that contractors will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that subcontractors are promptly paid for the work they have performed.

Transit Vehicle Manufacturer Requirement (§§ 26.5 & 26.49)

Prior to the new regulations, the definition of a Transit Vehicle Manufacturer (TVM) was written as a “one-size-fits-all” definition that included any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Recipients are required to purchase transit vehicles from TVMs that are listed on FTA’s list of eligible TVMs or that are awaiting FTA's approval of their annual DBE goal methodology at the time of solicitation.

The revised regulation updates the definition of TVMs to clarify that it does not include transit vehicle dealers, clarifies TVM award reporting requirements, and codifies current FTA practice for allowing recipients to establish a project specific DBE goal for a transit vehicle procurement from a specialized manufacturer when a TVM cannot be identified.

DBE Open Ended Performance Plan for Design-Build Contracts (§ 26.53)

For design-build solicitations with minimal project details at the time of advertisement with a contract goal, the Final Rule allows recipients to require primes to submit a DBE Open-Ended DBE Performance Plan (OEPP). To be considered responsive, primes will be required to make a commitment to meet the goal by continuous Good Faith Efforts (GFEs), provide details on the types of subcontracting work/services and projected dollar amount the prime will solicit DBEs to perform, and provide an estimated timeframe in which the DBE subcontract(s) will be executed. Upon mutual agreement with the Authority, primes may make revisions to the OEPP throughout the life of the project as long as the prime continues to use sufficient and adequate GFEs. This will require ongoing monitoring and oversight to evaluate the prime’s efforts.

New Distributor Definition (§ 26.55)

The Final Rule includes a new term, "DBE distributor," which is an established business that engages in the regular sale or lease of the items specified by the contract, but that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not

covered by the carrier's insurance. For drop-shipped goods where a DBE distributor bears the risk for loss or damage of such items, only 40% of the value of the items may be counted towards the DBE goal. DBE regular dealers that have facilities, inventory, and/or distribution or delivery equipment may receive 60% credit towards a DBE goal. A *DBE Regular Dealer/Distributor Affirmation Form* was created to accurately count eligible 60% credit for DBE regular dealer or 40% credit for DBE distributor participation. Primes are required to complete and submit the form with their bid.

Business Size Determination (§ 26.65)

To become a certified DBE, a firm must qualify as a small business as defined by the Small Business Administration (SBA) for the applicable NAICS codes. However, even if a small business meets the SBA definition, if a firm's average annual receipts over the preceding three fiscal years exceed \$30.72 million, it is ineligible to become a certified DBE. The U.S. DOT adjusts this amount annually and posts the updates on its website. Authority staff must revise the standard contract language each year to incorporate these changes.

Increase in Personal Net Worth (§ 26.68)

Personal Net Worth (PNW) is the net value of an individuals' reportable assets and liability, per the calculation rules in 49 CFR § 26.68. Prior to the Final Rule, the PNW cap for DBE certification purposes was last adjusted in 2011 to \$1.32 million. Under the Final Rule, the PNW cap is \$2.047 million and U.S. DOT will adjust the PNW cap every 3 years on the anniversary of the adjustment date of May 9, 2024. Authority staff will update its standard solicitation language where PNW is mentioned with each adjustment.

Counting DBE Participation After Decertification (§ 26.68)

If an agreement has been executed between a prime contractor and a DBE subcontractor, before the certifying agency has notified the DBE subcontractor of its decertification, the prime contractor may continue to use the decertified DBE subcontractor. The prime contractor may also continue to receive DBE credit for the full payment made to the decertified DBE subcontractor, but the Authority cannot count the continued performance by the decertified DBE subcontractor towards the Authority's overall DBE program goal.

If the decertified DBE subcontractor merges or is purchased by a non-DBE, the prime contractor will not receive DBE credit for utilizing that subcontractor and the Authority may not count the decertified DBE subcontractor's participation towards the Authority's overall DBE program goal. The prime contractor may not add work to the decertified DBE subcontractor's scope of work after notification of decertification without the consent of LAVTA.

Fiscal Impact

There is no direct fiscal impact associated with the recent changes to the DBE Program. However, these changes have increased the workload for staff due to enhanced monitoring and accountability functions.

Next Steps

Once the updated policy is approved by the Board of Directors Staff will submit to the FTA for approval.

Recommendation

The Finance and Admiration Committee recommends that the Board of Directors approve Resolution 30-2024 and the updated DBE policy.

Attachments:

1. Resolution 30-2024
2. Updated DBE Policy

RESOLUTION NO. 30-2024

**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 Enterprise Rule; and

WHEREAS, the Livermore Amador Valley Transit Authority has added clarification to 49 CFR part 26 to update the program to coincide with the changes made by the Department of Transportation in April 2024

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 7th day of October 2024.

Evan Branning, Chair

ATTEST:

Christy Wegener, Executive Director

Approved as to form:

Michael Conneran, Legal Counsel

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, Updated October 2024)*

Section 26.1, 26.23 Objectives/Policy Statement

The Livermore/Amador Valley Transit Authority (LAVTA or Authority) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, revised as of April 9, 2024, as may be amended (Regulations). 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

In order to achieve DBE participation, the Authority has developed procedures to remove barriers to DBE participation in the bidding and award process.

The Board of Directors is responsible for establishing the DBE policy of the Authority. The Executive Director is responsible for ensuring adherence to this policy. The DBE Liaison, in coordination with all Authority Officers, Department Heads, and Purchasing and Buying staff, is responsible for the development, implementation, and monitoring of the DBE Program in accordance with the Authority's nondiscrimination policy. It is the expectation of the Board of Directors and the Executive Director that all Authority personnel shall adhere to the spirit, as well as the provisions and procedures, of this Program.

This policy will be circulated to all Authority personnel and to members of the community that perform or are interested in performing work on Authority contracts. Analysis regarding the overall DBE goal(s) and/or project goal(s) established every three years is available to review at www.wheelsbus.com or by visiting [the Authority's](#) administrative office at 1362 Rutan Court Suite 100 Livermore, Ca 94551.

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.

Christy Wegener
Executive Director

Date

SUBPART A – GENERAL REQUIREMENTS

Sections 26.3 and 26.1 Applicability

The Authority, a recipient of federal financial assistance from the Federal Transit Administration (“FTA”) of the U.S. Department of Transportation (U.S. DOT), is required to implement a DBE Program in accordance with 49 C.F.R. Part 26, which is incorporated herein by this reference. The Program outlined herein applies to all Authority contracts that are funded, in whole or in part, by U.S. DOT federal financial assistance. In the event of any conflicts or inconsistencies between the Regulations and this DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

Section 26.1 Objectives

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 marketplace outside the DBE Program; and
7. To adhere to the adopted LAVTA purchasing policy principles throughout all aspects of the DBE program.

Section 26.5 Definitions

Any terms used in this Program that are defined in 49 C.F.R. § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

A. Contract

A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

B. Contractor

One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

C. Department or DOT

The U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

D. Disadvantaged Business Enterprise (DBE)

A for-profit, small business concern: 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged 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.

E. FTA Tier I Recipient

An FTA recipient to whom this part applies will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

F. FTA Tier II Recipient

An FTA recipient to whom this part applies will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

G. Personal Net Worth (PNW) (Sections 26.5 and 26.68)

The net value of an individual's reportable assets and liabilities, per the calculation rules in §26.68.

H. Race-Conscious

A measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

I. Race-Neutral

A procedure or program that is used, or can be used, to assist all small businesses. For the purposes of this Program, race-neutral includes ethnic and gender neutrality.

J. Small Business Concern

With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and the U.S. Small Business Administration regulations implementing it (13 C.F.R. Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$30.72 million (or as adjusted for inflation by the Secretary of U.S. DOT annually) pursuant to 49 C.F.R. § 26.65(b).

K. Socially and Economically Disadvantaged Individuals

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if required.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. “Black American” (including persons having origins in any of the Black racial groups of Africa);
2. “Hispanic American” (including persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race);
3. “Native American” (including persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians);
4. “Asian-Pacific American” (including persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, the Federated States of Micronesia, or Hong Kong);
5. “Subcontinent Asian American” (including persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka);
6. Women; or
7. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such time as the Small Business Administration designation becomes effective.

L. Transit Vehicle Manufacturer (TVM)

Any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and

vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs

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. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Bidders List: 26.11 (c)

LAVTA will create and maintain a bidders list consisting of the following information for all bidders (including prime contractors and subcontractors, DBEs and non-DBEs) on U.S. DOT-assisted projects: firm name, firm address (including zip code), firm status as a DBE or non-DBE, race and gender information for the majority owner, NAICS code applicable to each scope of work the firm sought to perform in its bid, the age of the firm, and the annual gross receipts of the firm. Data gathering will be conducted on a form entitled *Prime Contractor and Subcontractor/Subconsultant/Supplier Report* for construction contracts and *Prime Consultant and Subcontractor/Subconsultant/Supplier Report* for professional service contracts. Subsequently, most of a firm's general information is collected on the Authority's procurement portal powered by Bonfire Interactive Ltd., during vendor registration. The DBELO will maintain the confidentiality of any proprietary information in accordance with applicable California law and the Regulations. This information will be requested of all bidders.

Authority staff will submit bidders list information required by § 26.11, paragraph (c)(2) to the DOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded. For "design-build" contracts where subcontracts will be solicited throughout the contract period as defined in a contractor's DBE Open-Ended Performance Plan, the data will be entered no later than December 1 following the federal fiscal year in which the design-build contractor awards the relevant subcontract(s).

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)

The recipient 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 the recipient 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 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 the recipient deems appropriate, which may include, but is not limited to (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

,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 May 6, 2021 by using their website www.federalreserve.gov/releases/mob/. 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 clauses in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from LAVTA. The prime contractor agrees to pay all retainage owed to each subcontractor for satisfactory completion of the accepted work within 30 days after LAVTA's payment to the prime contractor. 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. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by LAVTA. When LAVTA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

If applicable California state law requires the prime contractor to pay subcontractors within a shorter time period than the 30-day time periods set forth above, the prime contractor must comply with the applicable state law. The prime contractor's attention is called to Bus. & Prof. Code, § 7108.5 (requiring prime contractors to pay subcontractors working on public works of improvement within 7 days of receipt of each progress payment) and Civ. Code, § 3321 (requiring prime design professionals to pay subconsultant design professionals working on public works of improvement within 15 days of receipt of each progress payment or final retention payment).

Any violation of the prompt payment provisions shall subject the violating Contractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by Contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. Contractors shall include language in their subcontracts that stipulates Contractor and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Contractor will not be reimbursed for work performed by subcontractors unless and until Contractor ensures that subcontractors are promptly paid for the work they have performed.

U.S. DOT requires recipients to ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed by using one of the three methods set forth in 49 C.F.R. § 26.29(b). Subject to state prompt payment requirements that do not conflict with federal regulations, the Authority will comply with this prompt payment of retention requirement by using the method in 49 C.F.R. § 26.29(b)(3): hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

Prompt payment and return of retainage requirements apply to both DBE and non-DBE subcontractors at all tiers.

The Authority will use the following mechanisms for proactive monitoring and oversight of a prime contractor's compliance with subcontractor prompt payment and return of retainage requirements:

- Prime contractors must submit proof of payment to subcontractors with their billing in order for the billing to be approved for payment.

The Authority will enforce these prompt payment and return of retainage requirements by:

- If the Prime contractor fails to meet these requirements LAVTA shall withhold retainage from the Prime contractor until all contract requirements including payment to subcontractors have been met.

Section 26.31 DBE Database

The DBE Database is a consolidated and automated directory that identifies firms that have been certified as DBEs by the California Unified Certification Program (CUCP). The DBE Database is jointly maintained and updated by the CUCP certifying member agencies in coordination with Caltrans, the CUCP DBE Database Manager. The DBE Database is available at Caltrans' website at, <https://californiaucp.dbesystem.com>, and is made available to contractors and to the public. The Authority will use the DBE Database as a primary resource in developing overall goals, project goals, contract-specific goals and conducting outreach and other activities to promote DBE participation in U.S. DOT contracts.

The DBE Database shall include the firm's name, address, telephone number, website(s), and types of work –utilizing the North American Industry Classification System (NAICS) codes for which the firm is certified as a DBE. Additionally, the DBE Database may include, whenever possible, the date the firm was established, the legal structure of the firm, State licenses held, the percentage owned by disadvantaged individuals, capacity, previous work experience and a contact person. The DBE Database shall not in any way prequalify the identified DBE firms with respect to licensing, bondability, competence or financial responsibility.

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 use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

With respect to achieving the Authority's overall goal, the Authority will use a monthly progress report procedure to keep a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT–assisted prime contract awards to determine whether the Authority's implementation of contract goals is projected to be sufficient to meet its annual goal. This mechanism will inform our decisions to implement goals on contracts to be advertised according to our established contract goal-setting process. 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 damages;
 - 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, or in the case of race-neutral participation, the work subcontracted, to all DBEs at contract award (or subsequently) is performed by the DBEs to which the work was committed or subcontracted to, and such work is counted according to the requirements of 49 CFR § 26.55. 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, a review of contracting records, and monitoring the work site. If DBE subcontractors are used, a specific citation on the invoice detailing the amount and date of payment to the subcontractor will be required from the Prime contractor. We will document such reviews and monitoring with written verifications.
4. With respect to each DBE commitment, the Authority will keep a running tally that provides frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g). Notifications will be sent to Contractors that fall short of meeting their DBE/SBE commitments or contract goals.

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.

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 DBEs and SBEs, responding to requests for information, participating in prebid and preproposal meetings, and participating at outreach and training events for DBEs and small businesses. As time and resources allow, LAVTA will participate in outreach and informational events for DBEs and small businesses that may be coordinated with other U.S. DOT recipients, federal agencies, or local organizations. Topics discussed during these outreach events will include procedures on how to do business with LAVTA, how to become certified as a DBE or SBE, LAVTA's DBE 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 SBEs and any DBEs not certified by the CUCP provide documentation to verify their certification status. LAVTA may require SBEs to submit additional documents, as necessary, to verify their eligibility.

To participate as an eligible SBE in projects administered by the Authority, a firm must meet both of the following requirements:

a. A firm (including affiliates) must be an existing small business as defined by Small Business Administration (SBA) that meets the applicable size limit in 13 C.F.R. Part 121, which corresponds to the applicable NAICS codes for the appropriate type(s) of work that a firm performs.

b. Even if a firm meets the above requirement, the firm's (including affiliates') average annual gross receipts over the previous three federal fiscal years cannot exceed a maximum cap of \$30.72 million. DOT will adjust the maximum cap amount annually and will post on its website at <https://www.transportation.gov/DBESizeStandards>.

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

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.

Amount of Goal

Pursuant to 49 CFR 26.45, LAVTA will establish an 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 methodology we use to calculate overall 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.

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

The Authority shall require any transit vehicle manufacturers to certify that they have established an overall DBE goal that has been approved or not disapproved, at the time of solicitation, by FTA as a condition to bid on any Authority contracts. Before awarding to a TVM, the Authority shall verify that the bidder is listed on FTA's eligible TVM list at, <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>. The Authority shall complete the Vehicle Award Report to notify FTA of the TVM procurement award within 30 days of making such award. This reporting requirement is extended to subrecipients.

Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal and/or project goal for other FTA-assisted contract expenditures applies.

Project-specific goals for DBE participation are established for procurements of transit vehicles from specialized manufacturers when a TVM cannot be identified. The Authority will seek FTA's approval for the decision to use a DBE project-specific goal before the issuance of a public solicitation for such vehicles TVMs are not available to produce. The Authority will follow the procedures for goal-setting in 26.45.

Section 26.51 Regional Outreach

The DBELO is designated by the Executive Director to represent the Authority as a member of appropriate regional outreach consortia. The Authority will participate in such group programs, activities and efforts in the San Francisco Bay Area to 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. To this end, the DBELO and/or designated staff will attend scheduled meetings of such groups and will contribute to the achievement of their projects approved by the Executive Director

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

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. Good Faith Effort forms are to be included with the bid/proposal.

The DBELO is responsible for determining whether a bidder/offeree 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/offeree's good faith efforts before we commit to the performance of the contract by the bidder/offeree.

Information to be submitted (26.53(b))

LAVTA treats bidder/offeree's compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerees to submit the following information with their bid/proposal:

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 contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

For design-build contracts subject to a DBE contract goal with minimal-project details at the time of advertisement, Contractors must submit a DBE "Open-Ended DBE Performance Plan (OEPP)" with their proposals. An OEPP must include:

- (i) a commitment to meet the DBE goal for the entire project;
- (ii) provide details on the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit to DBEs to perform; and
- (iii) estimated time frame when the DBE subcontracts will be executed.

An OEPP may be modified by mutual agreement between the Authority and Contractor throughout the life of the project, as long as the Contractor continues to use good faith efforts to meet the goal. Authority staff will conduct ongoing monitoring and oversight to determine whether the Contractor is using good faith efforts to comply with the OEPP.

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/offeree may request administrative reconsideration. Bidder/offerees 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/offeree 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 must meet the DBE contract goal or 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

Only the work actually performed by a DBE will be counted towards the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except supplies and

equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate) may also be counted.

Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own work force. If a DBE does not perform or exercise responsibility for at least 30% 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 within normal industry practice for the type of work involved, LAVTA will presume that it is not performing a commercially useful function.

If materials or supplies are obtained from a DBE manufacturer, as defined in the Regulations, 100 percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, as defined in the Regulations, 60 percent (60%) of the cost will be counted.

If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40 percent (40%) of the cost of materials or supplies (including transportation costs) will be counted. A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement. Primes are required to submit with their bid the *DBE Regular Dealer/Distributor Affirmation Form*, a form designated by the Authority.

A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning, and operating, or maintaining a place of business as provided in 49 CFR § 26.55 (e)(2)(ii) if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis

DBE achievement will not be counted toward the goal until the DBE has been paid. The DBELO will track the participation of DBEs in contract-specific goal contracts separately from the participation of DBEs that is considered race-neutral. Additionally, the DBELO will not count that portion of a DBE's participation that is achieved after the certification of the DBE has been removed during the performance of a contract, with the exception of 49 C.F.R. 26.87(j)(3).

If an agreement has been executed between a prime contractor and a DBE subcontractor, before the certifying agency has notified the DBE subcontractor of its decertification, the prime contractor may continue to use the decertified DBE subcontractor. The prime contractor may also continue to receive DBE credit for the full payment made to the decertified DBE subcontractor,

but the Authority cannot count the continued performance by the decertified DBE subcontractor towards the Authority's overall DBE program goal.

If the decertified DBE subcontractor merges or is purchased by a non-DBE, the prime contractor will not receive DBE credit for utilizing that subcontractor and the Authority may not count the decertified DBE subcontractor's participation towards the Authority's overall DBE program goal. The prime contractor may not add work to the decertified DBE subcontractor's scope of work after notification of decertification without the consent of the Authority.

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: <https://californiaucp.dbesystem.com>

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.

<https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/certification/cucp-roster-of-certifying-agencies-revised-4-23-24-a11y.pdf> (ca.gov)

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 4 Form 1 & 2 for Contract Goals

Attachment 1
Organizational Chart

Attachment 4

Forms 1 & 2 for Contract Goals

Forms 1 and 2 will be placed in solicitations where a DBE contract goal has been established.

Forms 1 and 2 will not be incorporated into contracts without DBE contract goals.

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.)