

MINUTES OF THE DECEMBER 1, 2025
LAVTA BOARD OF DIRECTORS MEETING

1. Call to Order and Pledge of Allegiance

Chair Testa called the meeting to order at 4:00pm.

Director Branning participated remotely under the “just cause” provisions of Assembly Bill 2449. The Director notified the Board at the earliest opportunity, participated via audio and video, and made the required disclosures.

2. Roll Call of Members

Members Present

Julie Testa – Chair, City of Pleasanton
David Haubert – Vice Chair, County of Alameda
Craig Eicher – City of Pleasanton
Evan Branning – City of Livermore
Kristie Wang – City of Livermore
Jean Josey – City of Dublin
Michael McCorriston – City of Dublin

3. Meeting Open to Public

4. Meeting Minutes November 5, 2025, Tri-Valley Accessible Advisory Committee

Presented by Chair Hastings of the TAAC Committee
TAAC Chair Hastings presented an overview of the November TAAC meeting minutes.
Information Only.

5. Paratransit Ad Hoc Committee Report Out from November 13, 2025 Meeting

Presented by Director Josey and Director Branning.
Director Josey reported information from the November LAVTA/CCCTA Ad Hoc meeting, including areas of focus for the last year of the contract, including call center and On time performance (OTP).

Informational Only.

6. Consent Agenda A – E

- A. Minutes of the November 3, 2025 Board of Directors meeting
- B. Treasurer’s Report for October 2025
- C. DBE Policy Update – *Pulled from agenda.*
- D. Route 501 – Final Service Recommendation
- E. Fixed Route Customer Satisfaction Survey Results

The board discussed item B, Treasurer's report regarding the funds allotted for data and analytics. They also had questions for the fare revenues that are forecasted, appreciating the new format of the report. Director Wang had a questions about the 15,000,000 grant that will be addressed by the Director of Finance at the next meeting.

Item C was pulled from the consent agenda. The Board wanted to understand why we were changing the language, when it seems already compliant with neutral language. Executive Director Wegener stated that we would take another look at this item, with legal counsel, and bring it back to the next Board of Directors meeting.

No public comment received online or in person.

The Board approved Items A, B, D, and E.

Motion/Second: McCorriston/ Eicher

Aye: Testa, Haubert, McCorriston, Josey, Eicher, Branning, Wang

No: None

Abstain: None

7. FY26 Fare Increase Recommendation

Executive Director Wegener presented the FY26 Fare Increase Recommendation and Resolution 32-2025. Staff reviewed potential fare adjustments for fixed-route and paratransit service to address the structural deficit and conducted required outreach, including a public hearing and TAAC feedback. The proposal sets regular fares at \$2.50, senior/ADA fares at \$1.25, Youth Clipper at \$2.25, and paratransit at \$4.00, with senior eligibility remaining at age 65. Staff requested Board approval with an implementation date of April 1, 2026.

The Board discussed how much revenue would be raised with the fare increase.

Public comment received:

Herb Hastings spoke, requesting a one-month delay so the full TAAC could review the updated 25-cent paratransit fare increase, explaining that the committee's earlier letter was written before the revision and most members had not yet seen or commented on the final recommendation.

There was some discussion about the impacts of delaying the implementation of the fare increase. Wegener reported that staff's recommendation is in-line with what the TAAC recommended.

Motion/Second: Josey/McCorriston

Aye: Testa, Haubert, McCorriston, Josey, Eicher, Branning, Wang

No: None

Abstain: None

8. Paratransit Operations and Maintenance Contract Extension – One-Year Option Term

Staff presented the proposed one-year extension of the joint LAVTA/CCCTA Paratransit Operations and Maintenance contract with Transdev. They noted that Transdev's performance has been generally acceptable, the Ad-Hoc committee supports moving forward, and CCCTA has already approved the option year. Staff noted that extending the contract will prevent a rushed procurement and allow time to update the MOU and develop the next contract scope. Staff recommended approval of Resolution 34-2025.

No public comments received online or in-person.

Motion/Second: Josey/Eicher

Aye: Testa, Haubert, McCorriston, Josey, Eicher, Branning, Wang

No: None

Abstain: None

9. Para-Taxi Program Overview

Staff provided an informational overview of LAVTA's paratransit, para-taxi and Go Tri-Valley programs at the request of the Board Chair.

Informational Only.

Public comment received:

Herb Hastings emphasized that the One-Seat Ride, Para-Taxi, and Go Tri-Valley programs each meet important needs for riders with disabilities and should all be maintained.

10. Remote Meetings for Tri-Valley Accessible Advisory Committee (SB 707)

Staff provided an overview of SB 707, which allows members of advisory bodies such as the Tri-Valley Accessible Advisory Committee (TAAC) to attend meetings remotely if the Board adopts required findings related to public awareness and improved member participation. Staff will be bringing an item to the January TAAC meeting for discussion and then will return to the Board with a recommended action in February.

Information Only.

Public comment received:

Herb Hastings noted that TAAC members may have concerns about privacy and logistics with remote participation and asked staff to be ready to address these questions when the item is presented. He emphasized that remote participation should remain optional.

11. Executive Director's Report

Executive Director Wegener reported a 7.8% decline in October ridership and outlined January 2026 service adjustments to improve school trip timing and on-time performance. The Pleasanton Bus Service Plan is moving forward with outreach scheduled for January 13. Staff also provided updates on recent events, Clipper 2 preparations, the ARCHES pause, and LAVTA's \$63.95M Low-No grant award. Board requested adding average paratransit call hold time to performance tracking. Staff noted the new subcontractor, SilverRide, began service last

week with positive early feedback. Staff recommended canceling December committee meetings due to the holiday schedule.

12. Adjourn to CLOSED SESSION

Meeting adjourned to closed session at 5:51pm.

**13. Closed Session pursuant to Government Code Section 54957(b):
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Executive Director**

**14. Closed Session pursuant to Government Code Section 54957.6
CONFERENCE WITH LABOR NEGOTIATOR
Agency Representative: Michael Conneran, Legal Counsel**

[David Haubert, from County of Alameda, departed during closed session at 7:17pm.]

15. Reconvene to OPEN SESSION

Meeting reconvened at 7:20pm

[Evan Branning, from City of Livermore, departed at 7:20pm.]

16. Consideration of Amendment to Employment Agreement with Executive Director Christy Wegener

The Board of Directors approved an amendment to the employment agreement with Executive Director Christy Wegener that will include a 4% salary increase, three additional administrative leave days, and the employment agreement will extend through December 2, 2028.

Motion/Second: Josey/McCorriston

Aye: Testa, McCorriston, Josey, Eicher, Wang

No: None

Abstain: None

Absent: Haubert, Branning

17. Matters Initiated by the Board of Directors

None

18. Next Meeting Date is Scheduled for: January 5, 2026

19. Adjournment

Meeting adjourned at 7:22pm.

LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY

STAFF REPORT

SUBJECT: Treasurer's Report for November 2025

FROM: Tamara Edwards, Director of Finance

DATE: January 5, 2026

Action Requested

Review and approve the LAVTA Treasurer's Report for November 2025.

Cash accounts:

Our petty cash account (101) has a balance of \$200, and our ticket sales change account (102) continues with a balance of \$240 (these two accounts should not change).

General checking account activity (105):

Beginning balance November 1, 2025	\$3,488,138.04
Payments made	\$2,210,499.88
Deposits made	\$412,216.97
Ending balance November 30, 2025	\$1,689,855.13

Farebox account activity (106):

Beginning balance November 1, 2025	\$42,269.44
Deposits made	\$104,033.16
Ending balance November 30, 2025	\$146,302.60

LAI investment account activity (135):

Beginning balance November 1, 2025	\$31,627,414.14
Ending balance November 30, 2025	\$31,627,414.14

Operating Expenditures and Revenues Summary:

As this is the fifth month of the fiscal year, in order to stay on target for the budget this year expenses (at least the ones that occur on a monthly basis) should not be higher than 42%. The agency is at 38% overall.

Operating Revenues Summary:

While expenses are at 38% revenues are at 64% providing for a healthy cash flow.

Contracts Executed in November by the Executive Director between \$50,000 and \$100,000.

- 1) \$59,000 Task Order #2- CTE ICT Zero Emission Bus Transition Plan update
- 2) \$56,209-Valley Peterbilt for an engine replacement

Recommendation

Staff recommend that the Board of Directors approve the November 2025 Treasurer's Report.

Attachments:

1. November 2025 Treasurer's Report

**LIVERMORE AMADOR VALLEY TRANSIT AUTHORITY
BALANCE SHEET
FOR THE PERIOD ENDING:
November 30, 2025**

ASSETS:

101	PETTY CASH	200	
102	TICKET SALES CHANGE	240	
105	CASH - GENERAL CHECKING	1,689,855	
106	CASH - FIXED ROUTE ACCOUNT	146,303	
107	Clipper Cash	996,004	
109	BOC	46	
120	ACCOUNTS RECEIVABLE	380,524	
135	INVESTMENTS - LAIF	31,627,414	
13599	INVESTMENTS - LAIF Mark to Market	28,360	
14001	Due From Rail	2,930,530	
150	PREPAID EXPENSES	165,562	
160	OPEB ASSET	67,698	
165	DEFERRED OUTFLOW-Pension Related	567,050	
166	DEFERRED OUTFLOW-OPEB	656,498	
170	INVESTMENTS HELD AT CALTIP	0	
175	CEPPT RESTRICTED INVESTMENTS	442,623	
111	NET PROPERTY COSTS	53,143,153	
	TOTAL ASSETS		92,842,060

LIABILITIES:

205	ACCOUNTS PAYABLE	388,144	
211	PRE-PAID REVENUE	2,028,309	
21101	Clipper to be distributed	925,630	
22000	FEDERAL INCOME TAXES PAYABLE	40	
22010	STATE INCOME TAX	58	
22020	FICA MEDICARE	137	
22050	PERS HEALTH PAYABLE	0	
22040	PERS RETIREMENT PAYABLE	(98)	
22030	SDI TAXES PAYABLE	14	
22070	AMERICAN FIDELITY INSURANCE PAYABLE	1,563	
22090	WORKERS' COMPENSATION PAYABLE	144,742	
22100	PERS-457	0	
22110	Direct Deposit Clearing	760	
22120	Compensated absences	135,743	
23101	Net Pension Liability	1,325,703	
23105	Deferred Inflow- OPEB Related	285,799	
23104	Deferred Inflow- Pension Related	172,348	
23103	INSURANCE CLAIMS PAYABLE	15,722	
23102	UNEMPLOYMENT RESERVE	7,889	
	TOTAL LIABILITIES		5,432,503

FUND BALANCE:

301	FUND RESERVE	60,465,256	
304	GRANTS, DONATIONS, PAID-IN CAPITAL	32,140,057	
30401	SALE OF BUSES & EQUIPMENT	86,871	
	FUND BALANCE	(5,282,627)	
	TOTAL FUND BALANCE		87,409,557
	TOTAL LIABILITIES & FUND BALANCE		92,842,060

(\$ Thousands)	FY 2026												Budget	YTD % of Budget
	Actual Jul-25	Actual Aug-25	Actual Sep-25	Actual Oct-25	Actual Nov-25	Budget Dec-25	Budget Jan-26	Budget Feb-26	Budget Mar-26	Budget Apr-26	Budget May-26	Budget Jun-26		
Operating Revenue														
Passenger Fares	33	62	45	65	247	284	284	284	284	284	284	284	2,442	8%
Other Income	442	4	15,219	798	247	1,093	1,093	1,093	1,093	1,093	1,093	1,093	24,363	68%
Total Operating Revenue	475	66	15,264	863	494	1,378	26,805							
Operating Expenses														
Labor	161	163	164	241	158	179	179	179	179	179	179	179	2,137	34%
Fringe Benefits	225	71	65	87	66	139	139	139	139	139	139	139	1,485	30%
Services	173	276	140	169	168	205	205	205	205	205	205	205	2,360	32%
Purchased Transportation	1,212	1,251	1,248	1,319	1,307	1,569	1,569	1,569	1,569	1,569	1,569	1,569	17,318	29%
Fuel and Supplies	52	128	98	54	127	160	160	160	160	160	160	160	1,582	21%
Utilities	50	33	33	34	33	48	48	48	48	48	48	48	520	29%
Insurance	777	-4	-17	0	0	18	18	18	18	18	18	18	880	86%
Taxes	5	12	10	8	12	10	10	10	10	10	10	10	114	30%
Advertising	0	2	2	3	2	17	17	17	17	17	17	17	130	5%
Misc.	28	2	14	8	6	32	32	32	32	32	32	32	279	19%
Total Operating Expenses	2,685	1,933	1,757	1,923	1,877	2,376	26,805	31%						
Expenditures														
Fund Balance - Operating Net	-2,210	-1,867	13,507	-1,060	-1,383	-998	-998	-998	-998	-998	-998	-998	0	
Fund Balance - Capital*	0	-2	-99	-142	-206	0	0	0	0	0	0	0	0	
Fund Balace - Operating and Capital	-2,210	-1,869	13,408	-1,202	-1,589	-998	-998	-998	-998	-998	-998	-998	0	
Reserves (Cash and Investments)														
Unrestricted	\$28,548,382													
Restricted														
Total Reserves	28,548	0	0											

* Capital only shows actual expenses

(\$ Thousands)

	FY 2023	FY 2024	FY 2025																	Budget FY 2025	YTD % of Budget
	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Total			
			24-Jul	24-Aug	24-Sep	24-Oct	24-Nov	24-Dec	25-Jan	25-Feb	25-Mar	25-Apr	25-May	25-Jun							
Operating Revenue																					
Passenger Fares	2140652.55	2242288	206,015.03	81,694.76	112,136.54	80,462.75	205,886.86	166,533.17	162,781.27	203,071.07	69,438.27	224,022.26	211,363.70	490,015.70	2,213,421.38	2,600,344.00			85%		
Other Income	17334137.45	19092225	205,477.02	15,058.36	547,152.78	349,852.80	14,001,018.95	529,854.31	2,027,673.25	348,314.33	250,981.74	110,439.99	322,222.35	-231,584.59	18,476,461.29	22,497,006.00			82%		
Total Operating Revenue	19474790	21334513	411,492.05	96,753.12	659,289.32	430,315.55	14,206,905.81	696,387.48	2,190,454.52	551,385.40	320,420.01	2,211,294.85	533,586.05	258,431.11	22,566,715.27	25,097,350.00					
Operating Expenses																					
Labor	1588745	1787639	148,143.74	153,011.99	151,850.34	152,074.27	230,670.99	152,948.66	153,370.26	154,192.98	150,810.63	154,660.55	234,218.81	188,477.98	2,024,431.20	2,244,059.00			90%		
Fringe Benefits	1087770	1279090	202,742.53	66,697.27	62,184.67	58,408.76	63,237.42	74,809.36	21,224.58	119,815.91	644,782.88	75,207.48	84,019.04	-265,021.19	1,208,108.71	1,656,998.00			73%		
Services	2182595	1886541	370,248.11	155,668.11	74,280.77	87,256.64	219,452.32	232,285.59	181,327.04	93,592.16	185,084.36	171,850.48	147,119.18	267,971.48	2,186,136.24	2,753,617.00			79%		
Purchased Transportation	12063135	13556008	958,063.88	1,037,801.31	1,316,153.40	1,088,370.57	1,027,959.24	1,017,319.91	1,072,747.36	1,447,469.75	1,200,271.42	1,188,616.36	1,195,906.90	1,608,778.54	14,202,609.20	14,751,299.00			96%		
Fuel and Supplies	1313685	1337270	27,694.82	153,932.42	72,049.82	100,292.48	26,652.39	149,051.87	69,002.40	117,926.25	110,407.91	69,661.04	96,437.23	157,839.17	1,150,947.80	1,947,523.00			59%		
Utilities	374990	464083	45,867.73	32,338.85	34,466.29	32,571.48	38,521.44	35,423.35	42,871.30	30,566.26	35,737.37	40,333.50	31,121.20	67,581.47	467,400.24	521,286.00			90%		
Insurance	557600	730764	733,956.23	-1,113.40	-5,801.09	-348.47	771	-668.42	-68.56	-91.41	-4,622.01	1,713.50	-3,715.67	137,473.29	857,484.99	648,917.00			132%		
Taxes	103688	133134	2,256.84	14,218.05	6,807.92	12,050.11	2,084.79	14,674.47	9,166.12	8,913.77	10,195.44	13,186.92	9,148.42	17,427.17	120,130.02	111,868.00			107%		
Advertising	35822	82837	0	8,000.00	5,467.36	953.14	1,607.63	837.11	13,637.08	1,111.87	44.18	5,079.87	102.43	13,169.80	50,010.47	174,000.00			29%		
Misc.	166760	77147	51,919.94	35,181.81	21,020.08	28,921.25	46,400.08	18,503.23	48,522.86	-61,539.36	22,752.80	7,232.14	19,711.29	60,830.28	299,456.40	287,783.00			104%		
Total Operating Expenses	19,474,790.00	#####	2,540,893.82	1,655,736.41	1,738,479.56	1,560,550.23	1,657,357.30	1,695,185.13	1,611,800.44	1,911,958.18	2,355,464.98	1,727,541.84	1,814,068.83	2,254,527.99	22,523,564.71	25,097,350.00			90%		
Excess Revenue Over (Under) Expenses																					
Capital Expenditures																					
Fund Balance - Operating	0	0	-2,129,401.77	-1,558,983.29	-1,079,190.24	-1,130,234.68	12,549,548.51	-998,797.65	578,654.08	#####	-2,035,044.97	483,753.01	-1,280,482.78	-1,996,096.88	0.00	0					
Fund Balance - Capital	0	0	0	-3957.75	-9800.75	-7490.75	-27408.06	-99832.32	-296367.59	-172246.62	-331181.1	-36256.84	-449851.13	-3169682.16	0.00	0					
Fund Balance - Operating and Capital	0	0	-2,129,401.77	-1,562,941.04	-1,088,990.99	-1,137,725.43	12,522,140.45	-1,098,629.97	282,286.49	#####	-2,366,226.07	447,496.17	-1,730,333.91	-5,165,779.04	0.00	0					
Reserves (Cash and Investments)																					
Unrestricted	26478138	21418976																			
Restricted	204032	322062																			
Total Reserves	26,682,170	21,741,038	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		

STAFF REPORT

SUBJECT: DBE Policy Update
FROM: Tamara Edwards, Director of Finance
DATE: January 5, 2026

Action Requested

Staff recommend 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).

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 October 3, 2025. These revisions center around removing race and sex-based presumptions from the regulatory definitions of “socially and economically disadvantaged individual” and requires business owners to demonstrate on an individual basis that they are socially and economically disadvantaged.

Discussion

This change requires an update to LAVTA’s DBE policy in regard to removing terminology regarding race conscious and race neutral goals and ensures that LAVTA will operate its DBE program in a nondiscriminatory manner without regard to race or sex while maximizing efficiency of service. Also, changed are the definitions of DBE based on the new regulations.

Other than the changes to the policy itself these changes do not affect how LAVTA administers DBE goals. LAVTA already sets DBE goals using a race and sex neutral methodology. While current DBE’s will need to be recertified, LAVTA is not a certifying agency therefore this only affects LAVTA in terms of not being able to update our DBE goal at this time, however, it is not due this year, and DBE reporting which the FTA has put on hold. Additionally, it could impact LAVTA in regard to claiming DBE participation on current contracts if the current DBE’s are not recertified. LAVTA trusts that the FTA will be providing leeway for these types of circumstances.

The nomenclature being utilized in LAVTA’s updated DBE policy reflects the suggested wording from the Department of Transportation.

Fiscal Impact

The is no direct fiscal impact associated with the recent changes to the DBE Program.

Next Steps

Once the updated policy is approved by the Board of Directors Staff will submit to the FTA for approval. Staff cannot proceed with new procurements until this DBE Policy is updated.

Recommendation

Staff recommend that the Board of Directors approve Resolution 02-2026 and the updated DBE policy.

Attachments:

1. Resolution 02-2026
2. Updated DBE Policy
3. Updated DBE Policy-Redlined

RESOLUTION NO. 02-2026

**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 October 2025

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 5th day of January 2026.

Julie Testa, 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, Updated December
2025)*

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, October 3, 2025, 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 operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program; 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 operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;
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; 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 49 C.F.R. §26.68.

H. DBE-Conscious

A measure or program that is specifically focused on assisting only DBEs.

I. DBE-Neutral

A measure or program that is, or can be, used to assist all small businesses.

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 Individual

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged individual if they can meet the relevant criteria described in 49 CFR § 26.67 Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

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, , 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 LAVTA 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 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 identify and investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals, as defined in 49 C.F.R. § 26.5, 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. **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. After the CUCP completes the reevaluation process described in 49 CFR § 26.111, 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 DBE-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 competition by small business concerns and eliminate obstacles to their participation in procurements as prime contractors or subcontractors, in accordance with 49 C.F.R. § 26.39. The SBE element is a DBE-neutral means of obtaining DBE participation.

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 SBEs, responding to requests for information, participating in prebid and preproposal meetings, and participating at outreach and training events for SBEs. As time and resources allow, LAVTA will participate in outreach and informational events for SBEs 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 SBEs.

Other strategies that LAVTA will consider as part of its small business element include unbundling contracts and setting contract specific SBE 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. LAVTA will require that all SBEs 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 every three years, 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 every three years, LAVTA will consult with appropriate constituent groups representing DBEs and general contractors' groups, community organizations and other officials or organizations to obtain information concerning the availability of DBEs and non-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 every three years. 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 that satisfy the requirements of 49 CFR 26.45; 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 DBE-Neutral & DBE-Conscious Participation

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

We will adjust the estimated breakout of DBE-neutral and DBE-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report DBE-neutral and DBE-conscious participation separately. For reporting purposes, DBE-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

After the CUCP has completed the reevaluation process described in 49 CFR § 26.111, LAVTA will use contract goals to meet any portion of the overall goal LAVTA does not project being able to meet using DBE-neutral means, in accordance with 49 CFR 26.51. 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 DBE-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).

Section 26.53 Good Faith Efforts Procedures Applicable to Contracts for Which There is a Contract Goal

Demonstration of good faith efforts (26.53(a) & (c))

If LAVTA establishes a DBE contract goal, it will award the contract only to a bidder/offeror who makes good faith efforts to meet it. LAVTA will determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, LAVTA will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. LAVTA will use Appendix A of 49 CFR Part 26 for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

Examples of good faith efforts are found in Appendix A to Part 26. LAVTA will include a Good Faith Effort form in solicitations subject to a DBE contract goal. Bidders/proposers who fail to meet the contract goal will be required to submit a completed Good Faith Effort form with their bid/proposal.

The DBELO is responsible for determining whether a bidder/offeror has meet the contract goal or documented sufficient good faith efforts to meet the contract goal to be responsive to the solicitation.

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

Information to be submitted (26.53(b))

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

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

1. The names, addresses, and certification numbers of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

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 48 hours of being informed by LAVTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Legal Counsel, 1362 Rutan Court #100, Livermore, CA 94550, (925) 455-7555. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract subject to a DBE contract goal (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 for contracts subject to DBE contract goals:

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 on the forms and in the manner prescribed by LAVTA: (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 DBE-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 – DBE CERTIFICATIONS

The California Unified Certification Program (CUCP) is responsible for DBE certifications in the state of California. LAVTA relies on the CUCP's DBE certification program, and currently does not recertify or make certification decisions. For information on the CUCP, please visit: <https://californiaucp.dbesystem.com/>.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request of any authorized representative of LAVTA or DOT. This reporting requirement also extends to any certified DBE subcontractor. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

ATTACHMENTS

- Attachment 1 Organizational Chart

- Attachment 2 Form 1 & 2 for Contract Goals

Attachment 1

Organizational Chart

Attachment 2

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.)

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, [Updated December 2025](#))*

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~~[October 3, 2025](#), 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,~~[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~~[operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service](#);
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
7. To adhere to the adopted LAVTA purchasing policy principles throughout all aspects of the DBE program.

21161911.21

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~~ operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;
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

21161911.22

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 49 C.F.R. §26.68.

H. RaceDBE-Conscious

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

:

21161911.23

Formatted: Underline

I. Race/DBE-Neutral

A ~~measure/procedure~~ or program that is ~~used~~, or can be ~~used~~, to assist all small businesses. ~~For the purposes of this Program, race/DBE-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 a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as 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 if they can meet the relevant criteria described in 49 CFR § 26.67 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. Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.~~

~~(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~~

21161911.24

~~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 ~~LAVTA~~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)

21161911.26

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 identify and investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals, as defined in 49 C.F.R. § 26.5, 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

21161911.27

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.

21161911.2g

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. After the CUCP completes the reevaluation process described in 49 CFR § 26.111, 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.

21161911.29

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 ~~DBE~~-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 competition by small business concerns and eliminate obstacles to their participation in procurements as prime contractors or subcontractors, in accordance with 49 C.F.R. § 26.39. The SBE element is a ~~facilitate compliance with the two objectives in 49 CFR 26.51: 1) To meet the maximum feasible portion of the goal by using ~~race~~DBE-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 ~~SBEs, DBEs and small businesses~~. As time and resources allow, LAVTA will participate in

outreach and informational events for ~~SBEs, 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 ~~SBEs, DBEs and small businesses~~.

Other strategies that LAVTA will consider as part of its small business element include unbundling contracts and setting ~~SBE~~-contract specific ~~SBE~~ 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 ~~every three years 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 every three years~~, LAVTA will consult with appropriate constituent groups representing ~~DBEs, minority, women and~~ and general contractors' groups, community organizations and other officials or organizations to obtain information concerning the availability of ~~DBEs and non-DBEs, 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~~ every three years. 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:

21161911.212

1. Demonstrated evidence of DBE capacity to perform work on LAVTA's project;
2. Real market conditions;
3. Disparity studies conducted within the jurisdiction that satisfy the requirements of 49 CFR 26.45; 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;

21161911.213

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 ~~DBE~~-Neutral & ~~DBE~~-Conscious Participation

LAVTA will meet the maximum feasible portion of its overall goal by using ~~DBE~~-neutral means of facilitating DBE participation. LAVTA uses the following ~~DBE~~-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, w~~We will adjust the estimated breakout of ~~DBE~~-neutral and ~~DBE~~-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report ~~DBE~~-neutral and ~~DBE~~-conscious participation separately. For reporting purposes, ~~DBE~~-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

~~After the CUCP has completed the reevaluation process described in 49 CFR § 26.111,~~ LAVTA will use contract goals to meet any portion of the overall goal LAVTA does not project being able to meet using ~~DBE~~-neutral means, ~~in accordance with 49 CFR 26.51~~. 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 ~~DBE~~-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).

21161911.2|4

Formatted: Font: Not Bold

~~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 Applicable to Contracts for Which There is a Contract Goal

Demonstration of good faith efforts (26.53(a) & (c))

~~The obligation of the bidder/offeror is to make good faith efforts. If LAVTA establishes a DBE contract goal, it will award the contract only to a bidder/offeror who makes good faith efforts to meet it. LAVTA will determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, LAVTA will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. LAVTA will use Appendix A of 49 CFR Part 26 for guidance in determining the adequacy of a bidder/offeror's 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. LAVTA will include a Good Faith Effort forms in solicitations subject to a DBE contract goal. Bidders/proposers who fail to meet the contract goal will be required to ~~are to be~~ submit a completed Good Faith Effort form ~~included~~ with their bid/proposal.~~

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

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

Information to be submitted (26.53(b))

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

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

1. The names, ~~and~~ addresses, and certification numbers of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

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 ~~48 hours~~^{40 days} of being informed by LAVTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Legal Counsel, 1362 Rutan Court #100, Livermore, CA 94550, (925) 455-7555. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract ~~subject to a DBE contract goal~~ (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 for contracts subject to DBE contract goals:

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 on the forms and in the manner prescribed by LAVTA: (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

21161911.217

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 ~~DBE-ace~~-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 – DBE CERTIFICATION STANDARDSS

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://californiauep.dbesystem.com>~~

21161911.218

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/cuep-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)

The California Unified Certification Program (CUCP) is responsible for DBE certifications in the state of California. LAVTA relies on the state-wide CUCP's DBE certification program, and currently does not recertify or make certification decisions. For information on the CUCP, please visit: <https://californiaucp.dbesystem.com/>.

Formatted: Font: Not Bold
Formatted: Font: Not Bold
Formatted: Font: Not Bold

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.

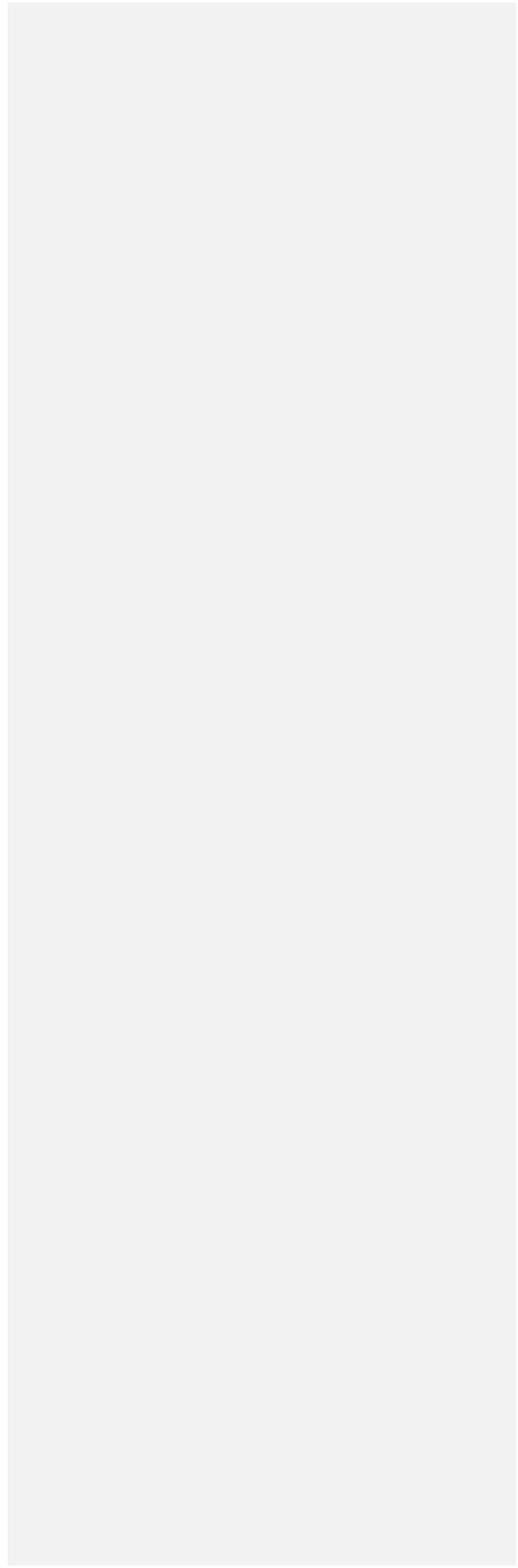
We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

Attachment 1 – Organizational Chart

21161911.219

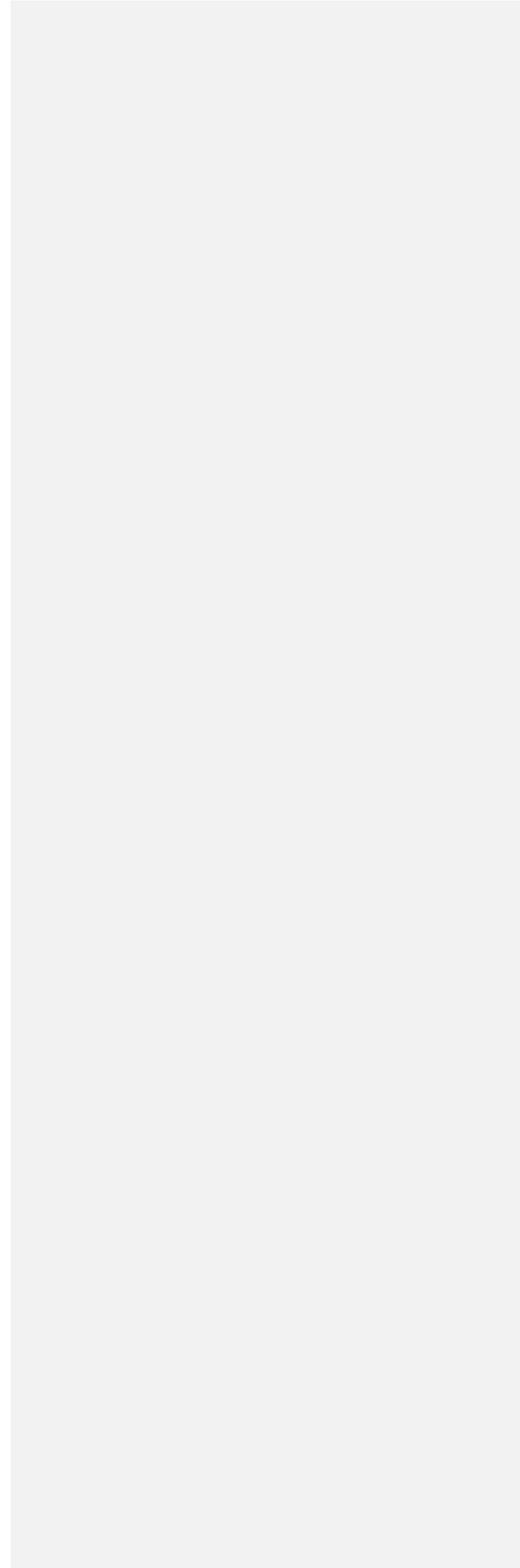
Attachment 2 Form 1 & 2 for Contract Goals



21161911.220

Attachment 1
Organizational Chart

21161911.221



Attachment 2

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 _____ Title _____
(Signature)

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.)

