



Riverside Transit Agency

**DISADVANTAGED BUSINESS
ENTERPRISE
PROGRAM
FFY 2019 - 2021**

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1. BACKGROUND

The Code of Federal Regulations (CFR) Title 49, Part 26 sets forth the requirements for Participation by Disadvantaged Business Enterprises in Department of Transportation Programs. (See Attachment G for 49 CFR Part 26.)

The U.S. Department of Transportation (DOT) has the important responsibility of ensuring that firms competing for DOT-assisted contracts are not disadvantaged by unlawful discrimination. Since 1980, the DOT's most important tool for meeting this responsibility has been its Disadvantaged Business Enterprise (DBE) Program. This program was established under the authority of Title VI of the Civil Rights Act of 1964 and other nondiscrimination statutes that apply to DOT financial assistance programs.

The DBE program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field," foster equal opportunity in DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

The Federal Transportation Administration (FTA) is one of the three DOT operating administrations with DBE program responsibilities and as such may provide additional guidance for program matters that are specific to their programs. The FTA requires that every recipient that has received Federal financial assistance from the Department of Transportation, and as a condition of receiving continued assistance, the recipient must sign an assurance that it will comply with 49 CFR Part 26.

According to DOT and FTA requirements, RTA has revised its DBE Program and DBE Participation Goals. In preparing the RTA DBE Program, staff chose to very closely match a DBE sample program that was provided by DOT. The General Counsel of the Department of Transportation reviewed the DOT sample program and approved it as consistent with the language and intent of 49 CFR Part 26, the DOT DBE rule.

The sample DBE Program was obtained by downloading it along with the DBE regulations themselves, and other DOT guidance from DOT's DBE website located at: <https://cms.dot.gov/civil-rights/disadvantaged-business-enterprise/sample-disadvantaged-business-enterprise-program>

DBE PROGRAM

A. Objectives/Policy Statement (26.1, 26.23)


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

It is the policy of RTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 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; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

To ensure adherence to this policy, the RTA Board of Directors, who are ultimately responsible for establishing the Agency's policy, has assigned the coordination of the DBE Program to the Chief Executive Officer. The Chief Executive Officer has delegated the responsibilities of DBE Liaison Officer to the Chief Procurement & Logistics Officer. 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 RTA in its financial assistance agreements with the Department of Transportation.

This policy statement is available to the Board of Directors, vendors, staff and general public via the Agency website.



Larry Rubio
Chief Executive Officer

10/26/18
Date

B. Applicability (26.3)

RTA is the recipient of Federal Transit Administration (FTA) funds authorized by Federal transit laws.

C. Definitions of Terms (26.5)

The terms used in this program have the meanings defined in 49 CFR 26.5.

Attachment C: Terms are contained therein.

D. Nondiscrimination (26.7)

RTA 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, RTA 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.

E. Record Keeping Requirements (26.11)

RTA will report DBE participation to FTA using the web-based electronic reporting system on a semi-annual basis and the DOT Uniform Report of DBE Awards or Commitments and Payments.

RTA will maintain information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

RTA will collect this information in the following ways:

A contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts;

A notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient and the like; or

A contract clause requiring prime bidders to provide information necessary for the bidders list, plus data collected by the Agency on prime contractors/bidders on contracts that do not have subcontracting possibilities.

F. DBE Program Updates (26.21)

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

G. Quotas (26.43)

RTA will not use quotas in any way in the administration of this DBE program.

H. DBE Liaison Officer (DBELO) (26.25)

RTA has designated the following individual as our DBE Liaison Officer (DBELO): Vincent Rouzaud, Chief Procurement & Logistics Officer, who may be reached at 1825 Third St, PO Box 59968, Riverside, CA 92517-1968, 951-565-5180 ph, 951-565-5001 fax. In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that RTA complies with all provisions of 49 CFR Part 26.

The DBELO has direct, independent access to the Chief Executive Officer concerning DBE program matters. The DBELO has a staff of five support personnel who devote a portion of their time to the program as assigned by the DBELO. Currently they are Luz Granados, Buyer, Rob Wyman, Sr. Contracts Administrator, Walter Watcher, Contracts Administrator, Melissa Blankenship, Contracts Manager and Natalie Zaragoza, Director of Contracts.

Attachment A: Organization Chart contains the DBELO's position in the organization as relates to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO may assign other personnel who will be responsible for any portion of developing, implementing and monitoring the DBE program, in coordination with the DBELO. The following duties and responsibilities will be performed as appropriate:

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) and monitors results.
6. Analyzes RTA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee as may be established.
10. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Participates in DBE training seminars.

13. Acts as liaison to the Uniform Certification Process in California.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.

I. Federal Financial Assistance Agreement Assurance (26.13)

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

Recipients 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 Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note - this language is to be used verbatim, as it is stated in 26.13(a).]

RTA will include this language in all financial assistance agreements with subrecipients.

J. DBE Financial Institutions (26.27)

Information on the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals in the community can be obtained from the California Unified Certification Program (CUCP) directory, said directory is currently available at the California UCP website www.californiaucp.com.

K. Directory (26.31)

RTA refers interested persons to the CUCP's directory available from the California Unified Certification Program website at www.californiaucp.com.

L. Overconcentration (26.33)

Currently, RTA has not identified any overconcentration in one or more types of work.

M. Business Development Programs (26.35)

Currently, RTA does not have business development or mentor-protégé program.

N. Required Contract Clauses (26.13, 26.29)

1) Contract Assurance (26.13)

RTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. 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 or subcontractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the Agency 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 or subcontractor from future bidding as non-responsible.”

2) Prompt Payment (26.29)

RTA will include the following clause in each DOT-assisted prime contract:

“The AGENCY shall hold retainage from the CONTRACTOR and shall make prompt and regular incremental acceptances of portions, as determined by the AGENCY of the contract work and pay retainage to the CONTRACTOR based on these acceptances. The CONTRACTOR or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the AGENCY. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the AGENCY'S prior written approval. Any violation of this provision shall subject the violating CONTRACTOR or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the CONTRACTOR, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.”

The following sanctions or consequences will result for non-compliance with the Prompt Payment clause:

“Failure to comply with this provision or delay in payment without prior written approval from AGENCY will constitute noncompliance, which may result in the termination of the Agreement of such other remedy as the Agency deems appropriate. AGENCY reserves the right to request the appropriate documentation from CONTRACTOR showing payment has been made to the subcontractors.”

3) Termination for Convenience

RTA has inserted the following clause in its standard form of Agreement:

“Contractor shall have no rights to terminate this Agreement or any subcontracts for Contractor’s convenience.”

4) Termination for Cause

RTA has inserted the following clause in its standard form of Agreement:

“Contractor shall have no rights to terminate any subcontract for cause and then perform the work with its own forces without the Agency’s prior written consent. Agency reserves the right to require Contractor to replace its terminated subcontractors with another subcontractor agreeable to the Agency and to do so without any increase or delay in the performance of this Agreement.”

O. Monitoring and Enforcement Mechanisms (26.37)

RTA 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. RTA also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Attachment B: Non-Compliance Regulations, Provisions, and Contract Remedies are contained therein.

This attachment lists the regulations, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities. Currently, the available remedies are the same as those for any non-compliance contract issues and are included in the related procurement.

P. Overall Goals (26.45)

1) Amount of goal

RTA’s overall goal for FFY 2019-2021 is the following: 1.5% of the Federal financial assistance, RTA will expend in DOT-assisted contracts (exclusive of FTA funds to be used for the purchase of transit vehicles).

[Note - This statement of the overall goal is intended for information of public users of the program, and does not imply that DOT, as such, approves the goal when it approves the program.]

2) Method

The following is a summary of the method RTA used to calculate this goal:

Not all firms who receive payment from RTA are firms that represent awarded contracting opportunities. Only the firms that

represent contracting opportunities are used to determine the DBE participation goal.

RTA projected the amount of DOT-assisted contracts to be let during this year by work categories and general dollar volume of work and estimated DBE participation levels based on North American Industry Classification System (NAICS) information from the U.S. Census Bureau and the California Unified Certification Program.

Bidders list statistics will continue to be tracked for future utilization.

RTA reviewed the CalTrans 2016 Disparity Study but found the study to be too geographically broad that it was not applicable to RTA .

RTA did not utilize any alternative methods in determining, meeting/counting the overall annual DBE goal.

RTA is unaware of any data on self-employment; therefore did not utilize in goal calculation.

RTA participates in the CUCP and as a member, has access to the CUCP statewide database of certified DBE businesses. Bidders on RTA projects will be directed to this DBE directory.

3) Transit Vehicle Manufacturers (26.49)

RTA will verify the status of transit vehicle manufacturer DBE Goals, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has either been approved or has not been disapproved by FTA. Alternatively, RTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Attachment D: The TVM Certification is attached hereto.

4) Process

Before establishing the overall goal each year, the DBELO will consult with the Chief Executive Officer, other staff, and as required, outside sources such as minority, women and general contractor groups, community organizations, the U.S. Census Bureau, and the CUCP to obtain information concerning the relative availability of DBE and non-DBE firms, the effects of discrimination on opportunities for DBEs, and RTA's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, RTA will publish a notice of the proposed overall goal on its website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice. The

notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposed overall goal may be reviewed.

Our triennial goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

RTA will begin using its overall triennial goal on October 1 of year one, unless RTA has received other instructions from FTA or, if the goal is established on a project basis, by the time of the first solicitation for a DOT-assisted contract for the project.

5) Breakout of Estimated Race-Neutral and Race-Conscious Participation (26.51)

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

Q. Contract Goals (26.51)

RTA will use contract goals, also referred to as race-conscious means, to meet any portion of the overall goal not met using race-neutral means.

RTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. RTA 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).

RTA will express its contract goals as a percentage of the total amount of a DOT-assisted contract or the Federal share of a DOT-assisted contract, which may vary depending on the particular procurement.

RTA will use race-conscious means, as RTA deems appropriate, to ensure that the objectives of this program are met.

The Agency will utilize the following race neutral measures to increase DBE participation:

1. The agency will arrange solicitations that will maximize DBE participation by informing potential DBEs of opportunities through the Agency's web site. The Agency may also split solicitations into logical units/quantities that would further allow DBE participation. The Agency will allow additional time for bids, where such additional time will not negatively impact the Agency in fulfilling its requirements
2. The Agency will examine its bonding requirements on all solicitations so that DBE participation may be maximized without sacrificing the Agency's requirements.
3. The Agency's limited staff does not currently permit the ability to provide technical assistance and other services to DBEs. However, DBEs will be advised of the larger agencies within RTA's CUCP Cluster area that have these resources.

4. The Agency will continue to provide DBEs with current contracting opportunities by publishing its list on its website.
5. DBE Directory. The agency will notify and advise all potential prime contractors of the CUCP DBE Directory by promoting its availability in print form and encouraging them to visit the website at www.californiaucp.com.

R. Good Faith Efforts (26.53)

1) Information to be submitted

When Contract Goals are used, RTA treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness and responsibility.

Each solicitation will require the bidders/offerors to submit the following information by the time the bid or proposal is due:

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

2) Demonstration of good faith efforts

The bidder/offeror is obligated to meet a contract goal or document the good faith efforts used in its attempt to meet a contract goal. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts: DBELO or the Buyer assigned to the contract.

RTA will ensure that, when contract goals are used, all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts, as needed, before RTA commits to the performance of the contract by the bidder/offeror.

3) Administrative reconsideration

Within 10 days of being informed by RTA that it has not sufficiently demonstrated good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

DBELO Reconsideration Officer, 1825 Third St, PO Box 59968, Riverside, CA 92517-1968, 951-565-5001 fax. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not sufficiently demonstrate good faith efforts.

In the event the Chief Procurement & Logistics Officer played any role in the original determination that the bidder/offeror did not sufficiently demonstrate good faith efforts, then the DBELO Reconsideration Officer shall be the Chief Financial Officer, Craig Fajnor, 951-565-5001 fax.

In the event one of the Buyers played any role in the original determination that the bidder/offeror did not sufficiently demonstrate good faith efforts, then the DBELO Reconsideration Officer shall be the Chief Procurement & Logistics Officer, Vince Rouzaud, 951-565-5001 fax.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation 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. RTA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not make adequate good faith efforts to meet the contract goal. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

4) Good Faith Efforts when a DBE is replaced on a contract

RTA requires that a prime contractor not terminate for convenience a DBE subcontractor and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without prior written consent from the DBE Liaison Officer.

RTA 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. RTA will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, RTA will require the prime contractor to obtain RTA's 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, RTA's contracting officer 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.

S. Counting DBE Participation (26.55)

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

T. Information, Confidentiality and Cooperation (26.106)

1) Confidentiality

RTA 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, RTA 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.

2) Monitoring Payments to DBEs (26.37)

RTA 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 by any authorized representative of RTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

RTA will require reporting by the prime contractor of actual payments to DBE firms for work committed to them at the time of contract award.

RTA 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.

U. Unified Certification Programs. (26.81)

RTA is a non-certifying member of the California Unified Certification Program administered by the certifying members of the UCP. RTA ensures that only DBE firms currently certified on the CUCP directory will participate as DBEs in its Program.

1) Certification Process

For information about the certification process or to apply for certification, see Attachment H – Roster of Certifying Agencies

3. ATTACHMENTS

The following attachments will be made available to the requesting party on an as-requested basis:

- A. Attachment A: Organizational Chart with DBELO**
- B. Attachment B: Non-Compliance Regulations, Provisions, and Contract Remedies.**
- C. Attachment C: Terms**
- D. Attachment D: Transit Vehicle Manufacturers (TVM) Certification**
- E. Attachment E: Public Notice-DBE Goals**
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