

Victor Valley Transit Authority

PROPOSED OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL FOR FEDERAL TRANSIT ADMINISTRATION (FTA) ASSISTED CONTRACTS (OCTOBER 1, 2018 THROUGH SEPTEMBER 30, 2021)

BACKGROUND

VVTA is a direct recipient of U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), funding. As a condition of receiving this assistance, VVTA must comply with the FTA's DBE Program: Implementations Modifications Final Rule to Title 49, Code of Federal Regulations (CFR) Part 26, effective November 3, 2014. The DBE Program is designed to enable small businesses owned and controlled by socially disadvantaged individuals to compete for federally-funded contracts. The purpose of the DBE goal-setting process is to level the playing field so DBEs may compete fairly for USDOT assisted contracts, however the program must be narrowly tailored in accordance with applicable law.

VVTA identified a total of eight (8) FTA-funded projects anticipated to be solicited during the FFY 2019-2021 triennial contracting period. The VVTA 2019-2021 FTA Goal Methodology includes the methodology and calculations used to develop the proposed triennial goal. The Overall Triennial DBE Goal for FTA-assisted project was established utilizing the federal two-step goal setting methodology. Step 1 included establishing a base figure utilizing quantifiable evidence of the relative availability of DBEs within specified industries corresponding to VVTA's FTA-assisted contracting opportunities anticipated to be awarded within the respective goal period. VVTA utilized the California Unified Certification Program (CUCP) Directory of Certified DBE firms and the 2012 United States Census Bureau County Business Patterns North American Industrial Classification System (NAICS) database within VVTA's market area (defined as San Bernardino County) for each of the categories of work.

Step 2 adjusts the Base Figure based upon review and assessment of other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrowly tailored provisions set forth under 49 CFR part 26.45: Step 2: DBE Goal adjustment guidelines.

The final Proposed Overall DBE Goal for FFY 2019-2021 for VVTA's FTA-assisted contracts is 2.00% based upon the federal share on race neutral measurements implemented by VVTA. Notice regarding the proposed DBE goal is being published in three (3) local newspapers of general circulation with an invitation to the public to review the goal, methodology and provide comments. Effective November 3, 2014, USDOT amended its DBE program to reduce the comment period from 45 days to 30 days. Public review of the documents must be performed at VVTA, during normal business hours, within 30 days of published notice to allow for receipt of comments. Comments are to be forwarded to the VVTA DBELO.

In response to race-neutral policy directives issued by the USDOT, VVTA utilizes a strictly race-neutral means. In a strictly race-neutral program, VVTA may not set numeric contract goals on any of its USDOT-assisted contracts for which DBE subcontracting possibilities exist. The application of race-neutral measures is in direct response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v United States & Washington State Department of Transportation*, whereby the FTA issued a Notice (Guidance) for Public Transportation Providers (Docket No. FTA-2006-24063).

Based on the Guidance, each recipient was requested to do the following:

- If a recipient does not currently have sufficient evidence of discrimination of its effects, then the recipient would submit an all-race-neutral Overall DBE Goal.
- The recipient's submission shall include a statement concerning the absence of adequate evidence of discrimination and its effects and a description of plans to either conduct a disparity/availability study or other appropriate evidence gathering process to determine the existence of discrimination or its effects on the recipient's marketplace.
- An action plan describing the study and timeline for its completion should also be included.

VVTA is required to perform the appropriate evidence gathering process to determine the existence of discrimination and its effects on its respective marketplace to effectively respond to the Court's ruling and the USDOT's directive (Docket No. FTA-2006-24063; Supplemental Notice dated August 21, 2006). Staff determined it is not feasible for VVTA, nor is it required, to conduct its own independent disparity study.

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VICTOR VALLEY TRANSIT AUTHORITY

Federal Transit Administration
(FTA) Overall DBE
Goal-Setting Methodology

for

FFY 2019- FFY 2021
Goal Period

Submitted in fulfillment of:

Title 49 Code of Federal Regulations Part 26

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DBE GOAL METHODOLOGY

I. INTRODUCTION

VVTA herein sets forth its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2019-2021 (October 1, 2018 through September 30, 2021), pursuant to Title 49 Code of Federal Regulations (CFR) Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs.” The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts, however, the program must be narrowly tailored in accordance with applicable law.

II. BACKGROUND

VVTA is a recipient of U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), funding. As a condition of receiving this assistance, VVTA signed an assurance that it will comply with FTA’s DBE requirements. In accordance with Title 49 CFR Part 26 provisions: Participation by DBEs in USDOT Programs, VVTA is required to develop and submit a Triennial Overall DBE Goal for its FTA-assisted projects.

VVTA herein presents its Overall DBE Goal Methodology for FFY 2019-2021.

III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2019-2021

Table 1 represents VVTA’Ss FTA-assisted contracting program, which consists of projects considered in preparing this goal methodology. The projects, which include Construction, Professional Services and Materials/Supplies contracting opportunities, are anticipated to be awarded during the triennial period:

Table 1

PROJECT NAME	TOTAL ESTIMATED PROJECT COST	ESTIMATED FTA DOLLAR SHARE	ESTIMATED FTA % SHARE
Operating Assistance	\$58,715,000.00	\$29,357,500.00	50%
Major Components	\$800,000.00	\$640,000.00	80%
Property Purchase and Design Build Victorville Transfer Center	1,500,000.00	\$1,200,000.00	80%
On-Board Security Camera System	\$86,660.00	\$69,328.00	80%
Mid-Life Engine Overhauls	\$496,000.00	\$396,800.00	80%
Garage and Shop Equipment	\$98,932.00	\$79,145.60	80%
Bus Facility Capital Lease	\$3,325,482.00	2,660,385.60	80%

Shelters and Amenities	\$150,000.00	\$120,000.00	80%
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Table 2 provides a summary of the categories of work with estimated cost breakdown for each. Categories of work are groups utilizing comparable North American Industry Classification System (NAICS) codes for purposes of weighting the categories of work based on the engineer's estimates.

Table 2:

CATEGORY OF WORK	NAICS CODES	ESTIMATED FTA DOLLARS BY NAICS	ESTIMATED FTA % BY NAICS
Bus and Other Motor Vehicle Transit Systems	485113	\$28,747,568.85	50%
General Automotive Repair	811111	\$1,036,800.00	80%
Commercial and Institutional Building Construction	236220	\$725,000.00	80%
Offices of Real Estate Agents and Brokers	531210	\$475,000.00	80%
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	\$69328.00	80%
Motor Vehicle Supplies and New Parts Merchant Wholesalers	423120	\$79,145.60	80%
Lessors of Nonresidential buildings (except Mini-warehouses)	531120	\$2,660,385.60	80%
Bus Shelter Construction	236220	\$120,000.00	80%

IV. GOAL METHODOLOGY

Step 1: Determination of a Base Figure (26.45)¹

To establish VVTA's Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBE) available to bid or propose on VVTA's FTA-assisted contracting opportunities projected to be solicited during the triennial goal period, VVTA followed the prescribed federal methodology to determine relative availability. This was accomplished by assessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the 2016 *U.S. Census Bureau County Business Patterns Database* within VVTA'S market area (defined as San Bernardino County) for each of the categories of work defined in Table 2.

VVTA's local market area consists of the geographic area in which a substantial majority of contracting dollars are expended and/or where the substantial majority of contractor and subcontractor bids or quotes are located.

In accordance with the formula below, the Base Figure is derived by dividing the number of ready, willing and able DBE firms identified for each work category by the number of all firms

¹ 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

identified for each corresponding work category (relative availability), weighting the relative availability for each work category by the corresponding work category weight from Table 2 (weighted ratio), and adding the weighted ratio figures together.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{\text{Number of All Ready, Willing and Able Firms}} \times \text{weight}$$

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2016 U.S. Census Bureau's Business Patterns Database

A concerted effort was made to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications, refer to Attachments I and II. The result of the Base Figure calculation is 1.64%, as shown in Table 3 as follows:

Table 3

CATEGORY OF WORK	DBES	ALL FIRMS	CATEGORY WEIGHT	WEIGHTED RATIO
Bus and Other Motor Vehicle Transit Systems	4	1825	.0021	.21%
General Automotive Repair	5	2998	.0017	.17%
Janitorial Services	49	1647	.0298	2.98%
Commercial and Institutional Building Construction	160	3134	.0510	5.10%
Offices of Real Estate Agents and Brokers	5	1768	.0028	.28%
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	9	2916	.0031	.31%
Motor Vehicle Supplies and New Parts Merchant Wholesalers	10	2916	.0034	.34%
Lessors of Nonresidential Buildings (except Mini-warehouses)	8	1768	.0045	.45%
Bus Shelter Construction	160	3134	.0849	5.1%
Base Figure (i.e., Sum of Weighted Ratios for all Work Categories)				=1.64%

Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, VVTA reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrowdropbo tailoring provisions set forth under 49 CFR Part 26.45: Step 2; DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included Past DBE Goal Attainments and Other Evidence, as follows:

A. Past DBE Goal Attainments

As historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform, VVTA proceeded to calculate past DBE participation attainments for the three (3) federal fiscal years, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by VVTA within the last three (3) federal fiscal years.

Table 4

FEDERAL FISCAL YEAR (FFY)	FTA DBE GOAL ATTAINMENT %
2015/16	2%
2016/17	7%
2017/18	6%
Median DBE Attainment Within the Last Three (3) Years	5%

* through 03/31/18

Because the goal for the past three years was at 1%, the award of 1 contract to Transdev, the subcontractor for VVTA, the attained goal was higher than anticipated. The contract with Transdev ends on June 30, 2018. All of the evidence available in the VVTA’S jurisdiction has been examined and the evidence does suggest that an adjustment to the base figure is necessary. In anticipation of meeting the goal as evidenced by the last two fiscal years, the adjustment is made to 2.00% as VVTA’s DBE Goal for FY 2019-2021.

B. VVTA Bidder’s List

VVTA will continue to capture Bidders List information for the identification and potential use in meeting future DBE goal determinations.

C. Other Available Evidence

VVTA is not aware of any current disparity studies within their jurisdiction and/or market area to consider in this step of the goal setting analysis.

V. PROPOSED OVERALL DBE GOAL

The Final Proposed Overall DBE Goal for FFY 2019-2021 for VVTA’S FTA-assisted contracts is 2.00%. The DBE Goal based on the federal share is a Race Neutral goal and VVTA will implement race neutral measures to achieve this goal, as generally described in the following section. As a part of the prescribed goal-setting methodology, VVTA must project the percentage of its Proposed Overall DBE Goal that can be met utilizing race-neutral and race-conscious measures.

Race-Conscious & Race-Neutral Projection

The VVTA DBE goal attainment data, which equals a 5.00% means for the past three years, demonstrates that VVTA is able to meet the DBE goal through race neutral means. VVTA intends to continue to use race-neutral methods to meet the overall DBE goal of 2.00% for FFY 2019-2021 in accordance with Title 49 CFR Part 26.51.

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
Race-Conscious Component	0.0%
Race-Neutral Component	2.00%

VI. RACE-NEUTRAL IMPLEMENTATION MEASURES

VVTA is currently implementing a number of race- and gender-neutral remedies to outreach and promote the participation of DBEs and small businesses in VVTA's FTA-assisted contracting program. VVTA plans to continue or implement the following race-neutral measures for FFY 2016-2018 and will continue to explore other options for consideration based on VVTA's success in meeting its overall DBE goals based on these efforts:

- VVTA will host and participate in workshops for the DBE and Small Business community. VVTA will attend and participate in vendor fairs hosted by unrepresented groups and other public agencies.
- VVTA will unbundle solicitations, provide pre-bid/pre-proposal conferences to afford networking opportunities for primes and subcontractors. VVTA will promote and encourage teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation. .
- Structure solicitations to remove barriers such as the inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing). Specifically, VVTA will, through its website, refer the DBE and Small Business contracting community to the SBA Bonding Assistance Program.
- VVTA will solicit DBEs and other small businesses participation by carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).
- As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, VVTA will actively promote the Small Business conferences, programs,

and support services offered by other agencies that have established DBE and Small Business Programs. VVTA will also begin conducting “How to do Business with VVTA” and DBE workshops.

- VVTA will advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website: www.CaliforniaUCP.com. VVTA will also advise the contracting community of the available small businesses certified by the California Department of General Services (DGS) and found at the following <http://www.bidsync.com/DPXBisCASB>.
- VVTA will advise the DBE and small business community to participate in Caltrans’ related bidding/proposal opportunities at <http://www.dot.ca.gov/hq/esc/oe/>. VVTA will encourage DBEs and small businesses to seek the assistance and training through the U.S. Small Business Administration at www.sba.gov.

Fostering Small Business Participation²

VVTA has implemented several strategies to foster small business participation in its contracting process. These include the following:

- Conducting “How to do Business with VVTA” and DBE workshops.
- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On larger prime contracts requiring the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current VVTA contractors or past VVTA contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.

VII. PUBLIC PARTICIPATION AND FACILITATION

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business associations, and community organizations within the VVTA market area will be consulted and provided an opportunity to review the triennial goal analysis and provide input. VVTA will prepare Outreach Consultation Letters advising the

² See Title 49 CFR Part 26 Section 26.39 “Fostering Small Business Participation.”

aforementioned business community of the proposed DBE goal analysis and its availability for review and comment.

VVTA plans to issue a Public Notice in general circulation media and minority focused media publishing the VVTA Draft Proposed FTA Overall DBE Goal-Setting Methodology for FFY 2019-FFY 2021. The notice would inform the public that the proposed goal and rationale are available for inspection at VVTA's principal office during normal business hours for 30 days following the date of the Public Notice, and that VVTA would accept comments on the goal analysis for 30 days from the date of the Public Notice. VVTA will give full consideration to all comments and input received as a part of this process and will assess its impact on the goal-setting methodology.

ATTACHMENT I

VVTA
FEDERAL TRANSIT ADMINISTRATION
FEDERAL FISCAL YEAR 2019-2021

ESTABLISHMENT OF THE NUMERATOR:

OF ESTABLISHED DBE FIRMS BY NAICS WORK CATEGORIES WITHIN THE MARKET AREA
(SAN BERNARDINO COUNTY) ¹

NAICS Code	CATEGORY OF WORK	San Bernardino # DBE Firms
485113	Bus and Other Motor Vehicle Transit Systems	4
811111	General Automotive Repair	5
236220	Commercial and Institutional Building Construction	160
531210	Offices of Real Estate Agents and Brokers	5
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	9
423120	Motor Vehicle Supplies and New Parts Merchants	10
531120	Lessors of Nonresidential Buildings (except Mini-warehouses)	8
236220	Commercial and Institutional Building Construction	160
TOTAL NUMBER OF ESTABLISHED DBE FIRMS:		211

¹ **DATA SOURCE:** California UCP DBE Database of Certified Firms.

ATTACHMENT II

VVTA
 FEDERAL TRANSIT ADMINISTRATION
 FEDERAL FISCAL YEAR 2016-2018

ESTABLISHMENT OF THE DENOMINATOR:

OF ALL ESTABLISHED FIRMS (DBEs and Non-DBEs) BY NAICS WORK CATEGORIES WITHIN THE MARKET AREA (DEFINED AS SAN BERNARDINO COUNTY)¹

NAICS Code	CATEGORY OF WORK	San Bernardino Total Number Established
485113	Bus and Other Motor Vehicle Transit Systems	1825
811111	General Automotive Repair	2998
236220	Commercial and Institutional Building Construction	3134
531210	Offices of Real Estate Agents and Brokers	1768
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	2916
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	2916
531120	Lessors of Nonresidential Buildings (Except Mini-warehouses)	1768
236220	Commercial and Institutional Building Construction	3134
TOTAL NUMBER OF ESTABLISHED DBE FIRMS:		20459

¹ **DATA SOURCE:** 2016 U.S. Census Bureau: County Business Patterns, NAICS Work Category Codes.



VICTOR VALLEY TRANSIT AUTHORITY

**DISADVANTAGED BUSINESS ENTERPRISE
(DBE) PROGRAM**

***Updated June 2018
(49 CFR Part 26)***

SUBPART A – General Requirements

Section 26.1 Objectives

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

Section 26.3 Applicability

VVTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the Teas-21, Pub. L 105-178.

Section 26.5 Definitions

VVTA will adopt the definitions contained in section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

VVTA 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, VVTA 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)

VVTA will report DBE participation to DOT as follows:

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

Bidders List: 26.11 (c)

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

DBE Program Updates (49 CFR Part 26.21)

VVTA will continue to carry out this DBE program until all funds from DOT financial assistance have been expended. VVTA will provide to DOT updates concerning significant changes in the DBE program.

VICTOR VALLEY TRANSIT AUTHORITY (VVTA) DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

2019-2021

Policy Statement

Section 26.1, 26.23 Objectives/Policy Statement

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


It is the policy of VVTA to ensure that DBEs, as defined in Part 26, have an equal opportunity to participate in DOT-assisted contracts. It is also VVTA's policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBE's 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 DBE's;
5. To help remove barriers to the participation of DBE's in DOT- assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.

The Procurement Manager position has been designated as the DBE Liaison Officer. In that capacity, Christine Plasting 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 VVTA in its financial assistance agreements with the Department of Transportation.

VVTA has disseminated this policy statement to the Board of Directors, to employees of the organization, and to DBE and non-DBE businesses that have performed work for VVTA on DOT-assisted contracts. Distribution of this policy statement is accomplished by the posting of this policy on the VVTA website at <http://vvta.org/bids/>.


Kevin Kane, Executive Director


Date

VVTA collects this information in the following ways:

State of CA DBE listing; State of CA Small Business/DVBE listing; a notice in all solicitations requiring bidders to report information directly to VVTA within their proposal package. Subcontractors will be required to report this information directly to VVTA once the Notice to Proceed has been issued to the Prime contractor.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13 (a)

VVTA 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. VVTA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. VVTA'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 VVTA 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 agreement with sub-recipients.

Contract Assurance: 26.13b

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

The contractor, sub-recipient, 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 contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since VVTA has received a grant for \$250,000, or more, in FTA planning, capital, and/or operating assistance in a federal fiscal year, VVTA will continue to carry out this program until all funds from DOT financial assistance have been expended. VVTA 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)

VVTA has designated the following individual as its DBE Liaison Officer:

Christine Plasting
Procurement Manager
Victor Valley Transit Authority
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Hesperia, California 92345
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In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that VVTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director of VVTA 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. The DBELO's 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 the DBE program.
3. Works with all departments to set overall goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurement so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes VVTA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Board of Directors on DBE matters and achievement.
9. Participates with the Project Manager to determine contractor compliance with good faith efforts.
10. Provides DBE's with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains VVTA's updated directory on certified DBE's.
14. Delegates the above and other DBE tasks to appropriate staff.

Section 26.27 DBE Financial Institutions

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

Through the California UPC website, to date VVTA has identified the following such institutions:
Alamo Capital Financial Services, 201 N. Civic Drive #360, Walnut Creek, CA
Denali Advisors, 5075 Shoreham Place #270, San Diego, CA
Grass Valley Associates, 4100 Redwood Road, Suite 182, Oakland, CA
Providence Capital Resources, 1171 S. Robertson Blvd., Suite 371, LA, CA
World Banknotes Exchange, 520 S. Grand Ave., Suite L100, LA, CA

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

VVTA includes the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from VVTA. The prime contractor further agrees to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of VVTA. This clause applies to both DBE and non-DBE subcontractors. A delay in payment by a prime contractor to a subcontractor is grounds for delay in the release of any retention payments due the prime contractor until restitution has been made to the subcontractor.

Section 26.31 Directory

VVTA maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. VVTA revises the Directory at the end of each semi-annual period and during the planning period of a solicitation. VVTA makes the Directory available as follows:

www.vvta.org/bids, and requests made directly to the DBELO at bids@vvta.org.

The State of California Unified Certification Directory may be found at http://www.dot.ca.gov/hq/bep/find_certified.htm.

Section 26.33 Overconcentration

VVTA has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

VVTA has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. VVTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the DBE program, so that DOT can take the steps as provided for in Section 26.109 (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).
2. VVTA will also consider similar action under its own legal authority, including responsibility determinations in future contracts.
3. VVTA will also provide a monitoring and enforcement mechanism to verify the work committed to DEBs at contract award is actually performed by the DBEs. This will be accomplished by Contract Compliance vehicle inspections; the DBELO performing site visits and employee interviews with workers on the job sites, for any other contracts let out not affiliated with the Operations contract at VVTA.
4. VVTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The purpose of an overall goal is to achieve a “level playing field” for ready, willing, and able DBEs seeking to participate in federally-assisted contracts at VVTA. In an effort to establish this level playing field, VVTA has examined its programs and relevant local markets and has determined the amount of participation that DBEs would be expected to achieve in the absence of present and past effects of discrimination. The Code of Federal Regulations (49 CFR part 26) requires recipients of DOT federal aid to use a two-step process in the development of their Overall DBE Goal.

Step One:

(1) Determine the base figure for the Overall DBE Goal. VVTA first identified the upcoming Federally-funded operational and capital projects and the total FTA funding amount, which is required to be at least \$250,000. Revenue vehicle purchases were not considered. VVTA then identified subcontracting opportunities attributable to the upcoming Federally-funded capital and operational projects and used the North American Industry Classification System (NAICS) Codes and the American Public Transportation Association (APTA) comparables. VVTA then decided on the San Bernardino County market range for each subcontracting opportunity.

VVTA next calculated the relative availability of certified DBE firms that are ready, willing, and able to work on DOT-assisted contracts. This figure is a measurement of the current percentage of ready, willing, and able certified firms and is based on demonstrable evidence of the Victor Valley, San Bernardino County, and nationwide labor market conditions. In determining this percentage, VVTA used three data sources immediately available to the agency, consisting of (1) the CUCP Database for Certified DBEs Directory at http://www.dot.ca.gov/hq/bep/dbe_query.htm; (2) The American Public Transportation Association (APTA) Database for transit related companies at <https://www.apta.com> and selecting Industry Information, then selecting COMPS (Catalog of Member Products & Services); and (3) the 2005 US Census Bureau County Business Patterns for all firms located at <http://censtats.census.gov/cbpnaic/cbpnaic.shtml>.

The percentage of available certified DBE firms was multiplied by each subcontracting opportunity cost to arrive at a Weighted Cost for each subcontracting opportunity total of all Weighted Costs was divided by the total FTA funding amount to arrive at the current Overall DBE Goal.

Step Two:

Adjust the Overall DBE Goal calculated in Step One to account for other evidence, such as prior years' actual percentages that were lower than the current year's calculations.

In accordance with Section 26.45, VVTA submits its overall DBE goal to DOT on August 1 every three years. Before establishing the overall goal for each period of time, VVTA will consult with the State of California CUCP Database, the area Chambers of Commerce, and other community organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs and will review VVTA's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, VVTA will publish a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at VVTA's principal office for 30 days following the date of the notice, and that VVTA will accept comments on the goal for 45 days from the date of the notice. This notice will be placed in local newspapers of general circulation, and on the VVTA website. VVTA will issue this notice by June 15 of the first year of triennial period. The notice will include the address to which comments may be sent and the address (including offices and websites) where the proposal may be reviewed.

VVTA's overall DBE goal submission to DOT will include a summary of information and comments received during this public participation process and VVTA's responses. VVTA will begin using its overall DBE goal on October 1 of each triennial period, unless other instructions are received from DOT. If VVTA establishes a goal on a project basis, VVTA will begin using the goal by the time of the first solicitation for a DOT-Assistant contract for the project.

Section 26.49 Transit Vehicle Manufacturers

VVTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this sections. Alternatively, VVTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51 (d-g) Contract Goals

VVTA will use contract goals to meet any portion of the overall goal VVTA that does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of VVTA's goal that is not projected to be met through the use of race-neutral means.

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

VVTA will express its contract goals as a percentage of [total amount of a DOT-assisted contract] or [the Federal share of a DOT-assisted contract.]

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. VVTA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before VVTA commits to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

VVTA treats bidder/offerors' 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:

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

Administrative reconsideration (26.53 (d))

Within 30 days of being informed by VVTA that it is not responsible, because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The bidder/offeror should make this request in writing to the following reconsideration official:

Simon Herrera
Senior Operations Manager
Victor Valley Transit Authority
17150 Smoketree St.
Hesperia, California 92345
(760) 995-3583
sherrera@vvta.org

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith effort.

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 VVTA to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. VVTA 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 decision resulting from this reconsideration process is not administratively appealable to the DOT.

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

VVTA 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. VVTA 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, VVTA will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the prime contractor fails or refuses to comply in the time specified, VVTA's Senior Procurement Specialist will issue an order stopping all or part of payment or work until satisfactory action has been taken. If the prime contractor still fails to comply, VVTA may initiate a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of VVTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements

apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of _____ percent has been established for this contract. The bidder/Offeror shall make good faith efforts, as defined in Appendix A. 49 CFR Part 26 (Attachment 6), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/Offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Counting DBE Participation (49 CFR Part 26.55)

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

VVTA will use the certification standards of subpart D 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.

For information about the certification process or to apply for certification, firms should contact: <http://www.dot.ca.gov/hq/bep/>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

VVTA is a member of a Unified Certification Program (UCP) administered by the California Department of Transportation (CALTRANS). The UPC will meet all of the requirements of this section. The following is a description of the UCP:

The main objectives of the DBE Program are:

- * To ensure that small DBE firms can compete fairly for federally funded transportation-related projects.
- * To ensure that only eligible firms participate as a DBE firm.
- *To assist DBE firms in competing outside of the DBE Program.

In order for small disadvantaged firms, including those owned by minorities and women, to participate as a DBE in DOT-assisted contracts, they must apply for and receive certification as a DBE. For the state of California, DBE certification is performed by the certifying agencies of the California Unified Certification Program (CUCP).

For additional information about the DBE Program, please visit the U.S. D.O.T., Office of Small and Disadvantaged Business Utilization.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

If firms were certified under former part 23, VVTA will ask firm to contact the CUCP for instructions on re-certification.

“No Change” Affidavits and Notices of Change (26.83(j))

In the event a firm has a change in its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or any material changes in the information they provided, VVTA will ask the firm to contact the CUCP for instructions.

The CUCP will require all owners of all DBEs who have certified to submit on their anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j).

Section 26.85 Denials of Initial Requests for Certification

If the CUCP denies a firm’s application or decertifies it, the firm may not reapply for a time as determined by the CUCP. Please see the CUCP website for instructions.

Section 26.87 Removal of a DBE’s Eligibility

Only the CUCP has the authority to remove a DBE’s certifications. For any questions, please refer to the CUCP website.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the CUCP’s decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington DC 20590
Phone (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

VVTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. VVTA will adhere to California Public Records Act – Government Code 6250-6270.

Notwithstanding any contrary provisions of state or local law, VVTA 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

VVTA 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 VVTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

VVTA 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.

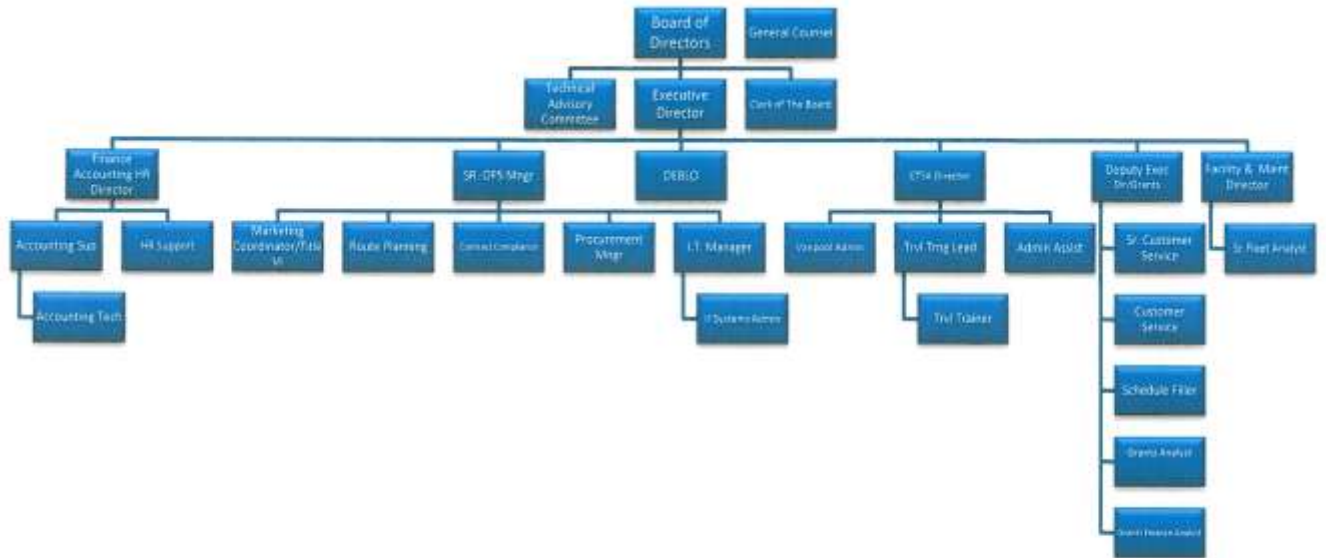
ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 DBE Directory
- Attachment 3 Monitoring and Enforcement Mechanisms
- Attachment 4 Breakout of Estimated Race-Neutral & Race-Conscious Participation
- Attachment 5 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 6 Regulations: 49 CRF Part 26

ATTACHMENT 1 ORGANIZATION CHART



Victor Valley Transit Authority Organizational Chart by Department FY 2017-2018



ATTACHMENT 2
DBE DIRECTORY

DBE Firm	Address	City	State	Zip	Tel	Fax	email address	Rep	Type
MK consulting	PO Box 4230	Big Bear Lake	CA	92315	909-534-8767		michelle@mkconsulting.me	Michelle Kirkhoff	Consulting
TransTrack systems	265 Belmont Avenue	Long Beach	CA	90803	562-987-4755	562-987-4756			ITS
Inland Computer systems	114 Airport Drive, Suite 107	San Bernardino	CA	92408	909-890-9696	909-890-9095	dispatch@inlandcomp.com	Sergio Guevara	IT
AMMA Transit Planning	393 Two Trees Road	Riverside	CA	92507	951-784-1333	951-784-1212	heather@ammatrasitplanning.com	Heather Menninger-Mayeda	Consulting
Joshua Contracting Co	84508 White Road	Phelan	CA	92371	760-949-5867	760-947-6848	kim@joshuaconsulting.com	Muriel Craft	Public Works
Geographics	4178 Chestnut Street	Riverside	CA	92501	951-369-1564	951-369-8837	inbox@geomail.info	Lisa Van Olden	Consulting
American News	PO Box 837	Victorville	CA	92393	909-889-7677	909-889-2882	msbamericannews@gmail.com	Mary Martin-Harris	Newspaper Publisher

ATTACHMENT 3

MONITORING AND ENFORCEMENT MECHANISMS

VVTA has available a number of remedies to enforce the DBE requirements contained in its contract, including, but not limited to the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Civil Code Section 3300-3322.

In addition, the federal government has available several enforcement mechanism that it may apply to firms participating in the DBE program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26;
2. Enforcement action pursuant to 49 CFR part 31;
3. Prosecution pursuant to 18 USC 1001.

ATTACHMENT 4

BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS PARTICIPATION

In response to race-neutral policy directives issued by the USDOT, VVTA utilizes a strictly race-neutral means. In a strictly race-neutral program, VVTA may not set numeric contract goals on any of its USDOT-assisted contracts for which DBE subcontracting possibilities exist. The application of race-neutral measures is in direct response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v United States & Washington State Department of Transportation*, whereby the FTA issued a Notice (Guidance) for Public Transportation Providers (Docket No. FTA-2006-24063).

Based on the Guidance, each recipient was requested to do the following:

- If a recipient does not currently have sufficient evidence of discrimination of its effects, then the recipient would submit an all-race-neutral Overall DBE Goal.
- The recipient's submission shall include a statement concerning the absence of adequate evidence of discrimination and its effects and a description of plans to either conduct a disparity/availability study or other appropriate evidence gathering process to determine the existence of discrimination or its effects on the recipient's marketplace.
- An action plan describing the study and timeline for its completion should also be included.

VVTA is required to perform the appropriate evidence gathering process to determine the existence of discrimination and its effects on its respective marketplace to effectively respond to the Court's ruling and the USDOT's directive (Docket No. FTA-2006-24063; Supplemental Notice dated August 21, 2006). Staff determined it is not feasible for VVTA, nor is it required, to conduct its own independent disparity study.

ATTACHMENT 5

FORM 1 & 2 FOR DEMONSTRATION OF GOOD FAITH EFFORTS

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.

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: _____

Telephone: _____ email: _____

Description of work to be performed by DBE firm:

The bidder/Offeror is committed to utilizing the above-named DBE firm(s) 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/offer 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)

ATTACHMENT 6

REGULATIONS: 49 CFR PART 26

A copy of 49 CFR Part 26 can be found at:

<http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=8184acbe3990c7bc4ae31bce1991da75&mc=true&r=PART&n=pt49.1.26>