

# Tulare County Regional Transit Agency (TCRTA)

## Federal Transit Administration Proposed DBE Program

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## **Tulare County Regional Transit Agency**

### **POLICY STATEMENT**

#### **Section 26.1, 26.23**

#### **Objectives/Policy Statement**

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

It is the policy of the TCRTA to ensure that DBEs are 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;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

Derek Winning, Director, has been delegated as the DBE Liaison Officer. In that capacity, Derek Winning 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 the Tulare County Regional Transit Agency in its financial assistance agreements with the Department of Transportation.

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Derek Winning, TCRTA Director

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Date

## **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**

The TCRTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of 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**

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

### **Section 26.7 Non-Discrimination Requirements**

The TCRTA 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 the local agency components of the DBE Program Plan, the TCRTA 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 Plan 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)**

We will report DBE participation to DOT as follows:

The TCRTA will directly submit to the FTA the Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1), to the State through BlackCat and to FTA.

Reports are due by June 1 (for the period covering October 1 – March 31) and by December 1 (for the period covering April 1 – September 30).

#### **Bidders List: 26.11(c)**

The TCRTA will create 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 bidder's 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.

We will collect this information in the following ways:

Options include, but are not limited to, 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 recipient-directed survey of a statistically sound sample of firms on a name/address list to get age/size information; a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report information directly to the recipient, etc.

### **Section 26.13 Federal Financial Assistance Agreement**

TCRTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project:

#### Assurance: 26.13(a)

TCRTA 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 TCRTA of its failure to carry out its approved program, the Department may impose sanction 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: 26.13b

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

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since the newly formed TCRTA will receive grants of \$250,000 or more in FTA planning capital, and/or operating assistance in a federal fiscal year, 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)**

We have designated the following individual as our DBE Liaison Officer:

Derek Winning  
200 E. Center Avenue,  
Visalia, CA 93291  
(559) 355-5281  
[DWinning@tularecag.ca.gov](mailto:DWinning@tularecag.ca.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the TCRTA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager 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 has a staff of three to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.

10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the TCRTA 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 contract to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans Disadvantaged Business Enterprise Program may aid the DBELO.

### **Section 26.29 Prompt Payment Mechanisms**

The TCRTA ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

#### **Section 26.29(a)**

The contractor or subcontractor shall not discriminate based on 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 recipient deems appropriate.

#### **Prompt Progress Payment to Subcontractors, Section 26.29(b)**

The TCRTA shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. 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 Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

#### **Prompt Payment of Withheld Funds to Subcontractors**

Federal regulation 49 CFR 26.29 requires one of three methods to be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor of subcontractor to a subcontractor. The TCRTA has chosen:

**Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

#### Section 26.29(d)

The TCRTA will provide the appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and condition of the contract. The means may also provide that any delay or postponement of payment amount the parties may take place only for good cause with the local agency's prior written approval.

#### Section 26.31 Directory

TCRTA will refer interested persons to the California Unified Certification Program DBE directory available from the Program's Web site at: <http://californiaucp.org/>

#### Section 26.33 Overconcentration

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

#### Section 26.35 Business Development Programs

TCRTA has not established a business development program.

#### Section 26.37 Monitoring and Enforcement Mechanisms

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

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. **Attachment 2** reflects 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.

3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is performed by the DBEs. This will be accomplished by direct observation, frequent site visits, review of contracting records, audits of payroll records, and verifying the title of the equipment used.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

## **Section 26.39 Small Business Participation**

TCRTA has incorporated the following non-discriminatory element to its DBE program, to facilitate competition on FTA-assisted projects by small business concerns (both DBEs and non-DBE small businesses):

### **1. Definition**

#### **Small Business Enterprise:**

For the purposes of this Program and in accordance with the State of California's definition of "microbusiness" as set forth in California Government Code Section 14837 and amended by the Director of General Services, "Small Business Enterprise" is defined as:

1. A small business which, together with affiliates, has average annual gross receipts of three million five hundred thousand dollars (\$3,500,000) or less over the previous three years, or
2. A small business manufacture with 25 or fewer employees.

#### **Market Area:**

The "Market Area" for this program will be the Counties of Kings, Fresno, and Tulare.

### **2. Compliance with State of California Small Business Eligibility Requirements:**

TCRTA will utilize the State of California certification to verify the status as a small business for participation in TCRTA's Small Business Program. Contractors will only be eligible to benefit from the Program if they are a State of California Certified Microbusiness. Accordingly, the definition of a "Microbusiness" will be modified as necessary to remain consistent with the State of California's definition and certification eligibility of "microbusiness".

### **3. Small Business for Contracts <\$50,000:**

TCRTA will establish a race-neutral small business set-aside contracts for Small Business Enterprises (SBEs), provided that an adequate number of qualified small businesses can compete for the work.



The State of California small business directory will be consulted to determine if there is an adequate pool of certified SBE vendors in the market area that are ready, willing, and able to perform. The contract opportunity will be advertised in accordance with the purchasing policy, but only Small Businesses will be eligible for award. In those circumstances when only a single proposal or bid that has been solicited under this Program has been received, the contract will be re-solicited, unless there is a sound documented business reason to justify the lack of competition.

#### **4. Contract with estimated cost >\$1,000,000**

TCRTA will include language in bid documents to encourage prime contractor to use “Small Business Enterprise”. The Language will include the definition of a small business, where to find information on how to be certified as a small business and direct them to the State of California Small Business Directory.

TCRTA will also require bidders to identify subcontractor that are certified as a “Small Business”. TCRTA staff will review, on an annual basis, the percentage of small business participation in subcontracts.

### **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 26.43 Set-asides or Quotas**

TCRTA will not use quotas or set asides in any way in the administration of the local agency component of the DBE Program Plan.

#### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 3** to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f), TCRTA will submit its overall goal to DOT on June 1 of each year. Before establishing the overall goal each year, TCRTA will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TCRTA’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 goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at TCRTA Transit Centers throughout the County of Tulare for 30 days following the date of the notice, and informing the public that TCRTA and DOT will accept comments on the goals for 45 days from the date of the notice. The TCRTA will also publish the advertisement in the Porterville Recorder, Visalia Times Delta, and the TCRTA website. Normally, we will issue this notice by May 1 of each year. The notice must 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 July 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.

#### **Section 26.47 Shortfall Analysis and Corrective Action Plan**

The definition of DBE shortfall is a recipient's failure to meet its DBE goal by the end of the fiscal year. In the event a shortfall occurs TCRTA will then conduct a shortfall analysis followed up by a corrective action plan.

The shortfall analysis would consist of analyzing in detail the reasons for the difference between the overall goal and the awards and commitments for the fiscal year. The shortfall analysis will explain the reasons for the shortfall and help to establish our corrective action.

Corrective action will identify steps and milestones to correct the shortfall. TCRTA will maintain the shortfall analysis and corrective actions in our records for each fiscal year that the goal is not met.

#### **Section 26.49 Transit Vehicle Manufacturers Goals**

TCRTA 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 section. Alternatively, TCRTA 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.

DBE regulations require FTA recipients to report transit vehicle procurement awards within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract. TCRTA will utilize the FTA Transit Vehicle Award Reporting Form, located below. <https://www.surveymonkey.com/r/vehicleawardreportsurvey>

TCRTA will comply with 49 CFR 26.49(a)(4) requirement and report its vehicle procurement awards to the FTA on an annual basis.

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

TCRTA will meet its overall DBE goal using a race-neutral means of facilitating DBE participation. To enhance the level of DBE participation, TCRTA will attempt to direct interested DBEs to the various organizations within the State that provide services and assistance to small, disadvantaged and minority-owned businesses. DBE contractors will be encouraged to

apply on all solicitations, and all solicitations and contracts will include a good-faith effort DBE goal as a race-neutral means to increase DBE participation.

### **Section 26.51(d-g) Contract Goals**

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of 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 following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive

Derek Winning  
200 E. Center Avenue,  
Visalia, CA 93291  
(559) 355-5281  
[DWinning@tularecag.ca.gov](mailto:DWinning@tularecag.ca.gov)

Juana Sierra-Perez  
200 E. Center Avenue,  
Visalia, CA 93291  
(559) 972-6740  
[JSierraPerez@gotcрта.org](mailto:JSierraPerez@gotcрта.org)

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

#### Information to be submitted (26.53(b))

TCRTA treats bidder/offers' 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/offers 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 3 days of being informed by TCRTA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: Derek Winning, TCRTA Director, 200 E. Center Avenue, Visalia, CA 93291, (559) 355-5281, [DWinning@tularecag.ca.gov](mailto:DWinning@tularecag.ca.gov). 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 (26.53(f))

TCRTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

#### Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of TCRTA 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 0.86 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 1), to meet the contract goal for DBE participation in the performance of this contract.

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

#### **Section 26.55 Counting DBE Participation**

We 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**

TCRTA is not a certifying agency but will help with the process and direct possible DBEs to an agency that is certified and follow 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. They will make their certification decisions based on the facts as a whole.

For information about where to apply for certification, firms should contact:

Derek Winning, TCRTA Director, 200 E. Center Avenue, Visalia, CA 93291, (559) 355-5281, [DWinning@tularecag.ca.gov](mailto:DWinning@tularecag.ca.gov).

The certification application forms, and documentation requirements are found in **Attachment 6** to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

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

The California Unified Certification Program (CUCP) provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concessionaire disadvantaged business enterprise (ACDBE) status.

As mandated by USDOT in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Parts 23 and 26, all public agencies that receive USDOT federal financial assistance must participate in a statewide unified certification program. These public agencies, commonly referred to as “recipients” of USDOT funds, include municipalities, counties, special districts, airports, transit agencies, and the State Department of Transportation (Caltrans).

The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a “One-Stop Shopping” certification program that eliminates the need for a DBE or ACDBE firm to obtain certifications from multiple agencies within the State. A business certified as a DBE or ACDBE through the CUCP is automatically accepted by all USDOT recipients in California.

The CUCP is charged with the responsibility of overseeing the certification activities performed by various certifying agencies and compiling and maintaining a single Statewide database of certified DBEs. The Database is intended to expand the use of DBE and ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all USDOT recipients in California. Select the “Directory” link on the top to access the Statewide database.

The CUCP certifying agencies are responsible for certifying DBE firms. You only need to apply for DBE certification at one agency. If your firm meets the General Criteria for DBE certification as provided on the Application Package, submit your completed application, along with the requested documentation, to one of the Certifying Agencies serving the geographical area where your firm has its principal place of business.

## **Section 26.83 Procedures for Certification Decisions**

### **Re-certifications 26.83(a) & (c)**

A certified agency will review the eligibility of DBEs that were certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. They will complete this review no later than three years from the most recent certification date of each firm.

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

The UCP requires all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the certifying agency’s application for certification.

The UCP also requires all owners of all DBEs that have been certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to TCRTA under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

The UCP requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

The certifying agency will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

## **Section 26.85 Denials of Initial Requests for Certification**

If a firm’s application is denied or decertified, it may not reapply until six (6) months has passed from the action. A written explanation for the denial will be issued by the certifying agency.

## **Section 26.87 Removal of a DBE's Eligibility**

In the event a certified agency proposes to remove a DBE's certification, they will follow procedures consistent with 26.87. **Attachment 7** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, the certifying agency will have determined that another official or office will serve as the decision-maker in de-certification proceedings. They will need to have established an administrative "firewall" to ensure that this other official or office will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

## **Section 26.89 Certification Appeals**

Any firm or complainant may appeal our decision in a certification matter to DOT within 90 days of the final decision. Such appeals may be sent to:

U.S. Department of Transportation  
Department 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

The certifying agency will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from disclose 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 by any authorized representative of TCRTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.



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 states in the schedule of DBE participation.

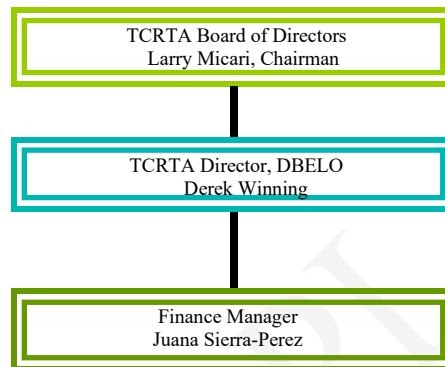
## **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	Monitoring and Enforcement Mechanisms
Attachment 3	Overall Goal Calculation
Attachment 4	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 6	Certification Application Forms
Attachment 7	Procedures for Removal of DBE's Eligibility
Attachment 8	Public Participation

## Attachment 1

### Organizational Chart

Disadvantaged Business Enterprise (DBE) Program  
Reporting Structure/Support Staff



#### Duties of:

DBELO: DBE Liaison Officer and General Administrator of the DBE Program. DBE Program(s) Compliance Officer. Compliance Officer reviews all matters related to contractor's adherence to the City's DBE Program. The contact information for the DBELO is listed below:

Name: Derek Winning,  
Address: 200 E. Center Avenue  
Visalia, CA 93291  
Phone: 559-335-5281  
E-Mail: [DWinning@tularecag.ca.gov](mailto:DWinning@tularecag.ca.gov)

## **Attachment 2**

### **Monitoring and Enforcement Mechanisms**

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, 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 3**

#### **Section 26.45: Overall Goal Calculation**

##### **Introduction**

The Tulare County Regional Transit Agency, herein referred to as TCRTA, submits this Disadvantaged Business Enterprise (DBE) goal methodology to the U.S. Department of Transportation's Federal Transit Administration (FTA) for review and approval pursuant to 49 CFR 26.45 to establish the overall DBE goal for its federally-assisted transit projects.

During fiscal years 2026, 2027, 2028, TCRTA's schedule of projects reflects both operational and capital projects.

49 CFR Part 26.45 requires a two-step process for setting the overall DBE goal, which should reflect the expected level of DBE participation on TCRTA contracts in the absence of discrimination. TCRTA proposes to establish its DBE overall goal for federal fiscal years 2025/2026 through 2027/28 at 0.76% for new contracts.

This attachment includes 1) a description of the methodology used to establish the goal, including the base figure and evidence with which it was calculated, and the evidence relied on for any adjustments; and 2) a projection of the portions of the overall goal expected to be met through race neutral measures; and 3) a summary listing of relevant available evidence of disparity and, where applicable, an explanation of why that evidence was not used to adjust the base figure.

##### **Annual Goal Methodology: (Two-Step Process)**

###### **Step One: Determining the Base Figures – 49 CFR Part 26.45(c)**

As part of the goal setting process, Step 1 requires TCRTA to begin with a base figure for the relative availability of DBEs. The base figure represents the number and relative availability of ready, willing, and able DBE firms as compared to all firms ready, willing and able to perform work for TCRTA. For this analysis, the defined market area includes Fresno, Kern, Kings, Madera, and Tulare counties (Caltrans District 6), with firms filtered by relevant work categories using the North American Industry Classification System (NAICS) codes. The formula used to calculate this percentage is shown below.

Step One Base Figure:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs} = 121}{\text{All firms ready, willing, and able} = 15,765}$$

**Numerator:** TCRTA used the California Unified Certification Program (CUCP) database to derive the total number of ready, willing, and able DBEs in the defined market area. The CUCP dataset was further filtered to NAICS category 23 (Construction) and category 54 (Professional, Scientific, and Technical Services).

(Data Source: <https://californiaucp.dbesystem.com/>)

**Total DBE Firms: 121**

**Denominator:** TCRTA used the 2023 U.S. Census Bureau “County Business Pattern” statistics to identify all ready, willing, and able firms in the defined market area. This dataset was further filtered to NAICS category 23 (Construction) and category 54 (Professional, Scientific, and Technical Services).

(Data Source: <https://data.census.gov/>)

**Total Firms: 15,765**

The numerator was divided by the denominator to derive the base figure for an overall goal of 0.76%

**Step Two: Adjustment – 49 CFR Part 26.45(D)**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

To reflect as accurately as possible, the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0%.

It is the opinion of TCRTA that the current DBE program data is representative of the local market capacity.

TCRTA’s bidder’s list provides no additional data that appears to be relevant to the establishment of the base goal. TCRTA does not have any data that would provide a more accurate measurement of the “current capacity of DBEs” for the TCRTA market area. Therefore, no adjustment to the base figure is proposed.

#### **Attachment 4**

##### **Section 26.51: Breakout of Estimated Race-Neutral & Race-Conscious Participation**

TCRTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

We estimate that, in meeting our overall goal of 0.76%, we will obtain 100% from race-neutral participation.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry 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.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

**Attachment 5**

**Forms 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 a 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/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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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.)



## **Attachment 6**

### **Certification Application Forms**

Caltrans is a member of a Unified Certification Program (UCP) administered by California Department of Transportation (Caltrans). The UCP will meet all of the requirements of this section. The following is a description of the UCP. CALTRANS has a web site with all DBE eligible companies listed.

Applications can be viewed at the Caltrans website:  
[http://www.caltrans.ca.gov/hq/bep/business\\_forms.htm](http://www.caltrans.ca.gov/hq/bep/business_forms.htm)

### **BEFORE YOU COMPLETE THE DBE APPLICATION**

**In order to apply for certification as a Disadvantaged Business Enterprise (DBE), your firm *must* meet the following eligibility criteria stated in 49 CFR Part 26:**

- The disadvantaged individual must be a U.S. citizen (or resident alien) and be a member of a socially or economically disadvantaged group.
- The disadvantaged individual must have a personal net worth (PNW) of less than \$1,320,000. Items excluded from a person's net worth calculation include an individual's ownership interest in the applicant firm, and his or her equity in their primary residence.
- Depending upon the nature of work performed, a firm (including its affiliates) must not have average annual gross receipts over the firm's previous three fiscal years in excess of \$22,410,000 (\$52,470,000 for airport concessionaires in general with some exceptions). This size standard is for construction related work. Depending on the type of work the business performs, other lower size standards may apply.
- The firm must be a for-profit small business where socially and economically disadvantaged DBE owner(s) own at least a 51% interest and have managerial and operational control of the business operations; the firm must not be tied to another firm in such a way as to compromise its independence and control.
- The socially and economically DBE owner(s) must possess the power to direct or cause the direction to the management and policies of the firm and to make day-to-day, as well as long-term decisions on matters of management, policy and operations.
- If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

**Office of Business & Economic Opportunity  
Attn: Certification Unit  
1823 14th Street,  
Sacramento, CA 95811**

**Questions? Call (916) 324-1700**

## **Attachment 7**

### **Procedures for Removal of DBE's Eligibility**

#### **a. Ineligibility complaints.**

1. Any person may file with you a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
2. You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
3. If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

b. Recipient-initiated proceedings. If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

#### **c. DOT directive to initiate proceeding.**

1. If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
2. The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

3. You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

d. Hearing. When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

1. In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

2. You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

3. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

e. Separation of functions. You must ensure that the decision in a proceeding to remove a firm's eligibility is made by office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

1. Your method of implementing this requirement must be made part of your DBE program.

2. The decision maker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

3. Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

f. Grounds for decision. You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

1. Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

2. Information or evidence not available to you at the time the firm was certified;

3. Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

4. A change in the certification standards or requirements of the Department since you certified the firm; or

5. A documented finding that your determination to certify the firm was factually erroneous.

g. Notice of decision. Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

h. Status of firm during proceeding.

1. (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

2. The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

i. Effects of removal of eligibility. When you remove a firm's eligibility, you must take the following action:

1. When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

2. If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal but may count toward the contract goal.

3. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

j. Availability of appeal. When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under 26.89.

## **Attachment 8**

### **Public Participation**

Pursuant to 49 CFR 26.45(g)(1), TCRTA shall provide the opportunity for public participation during the goal-setting process. TCRTA will consult with stakeholders, California Minority Business Council, Chambers of Commerce, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged businesses and/or the effect of discrimination on opportunities for DBEs.

Pursuant to 26.45(g)(2), TCRTA will publish a notice announcing the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours for 30 days following the date of the notice and comments regarding these documents will be accepted for 45 days from the date of publication. The public notice will indicate the locations(s) where the proposed goal can be reviewed and where comments can be transmitted. The notice will be published on TCRTA's website, on TCRTA's social media pages, and in local regional newspapers, including the Visalia Times Delta and the Porterville Recorder.

Once the public notice is published and the 45 days have passed, a copy of the public notice and any comments from the public regarding TCRTA's goal will be submitted.