



Disadvantaged Business Enterprise (DBE) Program

Agenda Item #7

May 12, 2021



Tri-Valley San Joaquin Valley
REGIONAL RAIL AUTHORITY



Introduction

- In order to be eligible for DOT financial assistance, the DOT must approve Valley Link's Disadvantaged Business Enterprise (DBE) Program.
- A DBE is a for-profit small business:
 - (1) That is at least 51% **owned by** one or more **individuals who are both socially and economically disadvantaged**; and
 - (2) Whose **management** and daily business operations are **controlled by one or more of the socially and economically disadvantaged individuals** who own it.

Purpose of the DBE Program

- Ensure nondiscrimination in the award and administration of federally assisted contracts.
- Create a level playing field on which DBEs can compete fairly for federally assisted contracts.

Does the DBE Program apply to all Valley Link contracts?

- No, the DBE Program will apply only to contracts funded in whole or in part by FTA assistance.
- Prop 209 prohibits public agencies from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- The DBE Program falls under an exception to Prop 209 for actions necessary “to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State.” (Cal. Const., art. I, § 31(e).)

Who will be in charge of the DBE Program?

- Valley Link plans to identify an individual to serve as the DBE Liaison Officer (DBELO) who will be responsible for administering the DBE Program.

Must DBEs be certified to participate in the DBE Program?

- Yes, through the California Unified Certification Program (CUCP).
- Valley Link will not serve as a CUCP certifying agency. It will accept DBE certifications issued by other CUCP certifying agencies.

What is an overall DBE goal?

- An annual overall DBE goal represents Valley Link's determination of the level of DBE participation it would expect for its federally funded contracts absent the effects of discrimination.
- Multi-step analysis based on amount of federal funding, types of contracts, and availability of DBEs.

Why aren't transit vehicle purchases included in the overall DBE goal?

- Transit vehicle manufacturers (TVMs) that bid on federally assisted transit vehicle procurements are required to establish their own DBE programs and overall DBE goals.
- Only those TVMs listed on FTA's certified list of TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

How will Valley Link meet a future overall DBE goal?

- Using race-neutral measures, such as:
 - Procedures designed to remove barriers to DBE participation.
 - Participation in DBE outreach activities.
 - Using resources to locate DBE firms capable of performing necessary subcontracted work.
 - Small Business Enterprise (SBE) Program.

May Valley Link use race-conscious measures to meet an overall DBE goal?

- Race-conscious measures are focused specifically on assisting only DBEs, including women-owned DBEs.
- Establishing a DBE contract goal is a race-conscious measure.
- DBE contract goals may be used to meet any portion of Valley Link's overall DBE goal it will not meet using race-neutral means.
- Contract goals may be used only for federally assisted contracts with subcontracting opportunities.
- Adjustments based on DBE participation achieved through race-neutral means.

What are good faith efforts?

- Applies to DBE contract goals only.
- Bidders must meet the contract goal or demonstrate that they made adequate good faith efforts to meet the contract goal.
- Examples of good faith efforts: evidence of market research to identify DBEs; documented outreach to DBEs; providing information to or negotiating with DBEs.
- DBELO will evaluate sufficiency of good faith efforts based on scope, intensity, and appropriateness to the objective, in accordance with federal regulations.



QUESTIONS

Board Action Requested

- Approve Resolution No. R05-2021 to approve and adopt a Disadvantaged Business Enterprise (DBE) Program and authorize the Executive Director to:
 - Take such actions as may be necessary to give effect to the Resolution;
 - Submit the DBE Program to DOT;
 - Designate a Disadvantaged Business Enterprise Liaison Officer; and
 - Implement the DBE Program and make minor modifications to the DBE Program, as necessary.