

From: VTA Board Secretary
Sent: Friday, July 7, 2023 5:49 PM
To: VTA Board of Directors
Cc: VTA Board Secretary
Subject: VTA Correspondence: Week Ending 7/7/23

VTA Board of Directors:

We are forwarding you the following:

From	Topic
Member of the Public - Laura Uden, NSI Engineering	Additional public comments pertaining to the June 16, 2023, Board of Directors Meeting – Agenda Items #2 – Public Comment, and #5.2 – VTA’s BART Silicon Valley Phase II Update (Business Resource Program)

Thank you.

Office of the Board Secretary
Santa Clara Valley Transportation Authority
3331 N. First Street
San Jose, CA 95134
408.321.5680
board.secretary@vta.org



Conserve paper. Think before you print.

From: Laura Uden

Sent: Friday, June 30, 2023 3:58 PM

To: VTA Board Secretary <Board.Secretary@vta.org>

Subject: [EXTERNAL] Public Comments for VTA Board Meeting on 6/16/23

CAUTION: This Message originated from outside VTA. Do not click links or open attachments unless you recognize the sender and know the content is safe!

I attended the VTA Board meeting on 6/16/23 and asked to provide public comments in the General period at the start of the Board meeting. At the end of the 60 seconds, I mentioned that I had more details on my topic, and was asked to provide the information to you for distribution to the Board. I've attached that information here.

I also asked to speak about Business Resource Program and was told that I needed to submit those comments to you for distribution. I've provided as a second attachment with the comment I wanted to make on that topic. Please let me know when these have been distributed to the Board, and thank you for help with this.

Laura Uden, PhD, PMP, CMQ/OE, CSEP
President



300 S. First Street, Suite 300G
San Jose, CA 95113
www.nsieng.com

Executive Summary of Issues on BSVII Experienced by NSI Engineering

NSI Engineering is a small, disadvantaged, disabled-veteran woman-owned firm. We brought our expertise in project and quality management to the BART Silicon Valley Phase II Program, writing VTA's Quality Management Plan that was submitted for FTA approval and EPD funding. Our firm was significantly damaged by VTA actions.

Key issues on the Program:

1. Firms **illegally substituted**, and regulations not followed for accepting, addressing, and resolving **discrimination complaints**:
 - a. NSI Engineering was illegally substituted with QEI Engineering on 09/30/20, nearly 3 years into our work on the Program, without cause, violating 49 CFR 26.53.
 - b. Four complaints about this to VTA's Contract Compliance Manager made between 08/07/20 and 12/14/20 were not formally documented.
 - c. VTA management took no action on any of those complaints, even AFTER the suspension of NSI Engineering and their replacement with QEI Engineering.
 - d. Upon a fifth complaint to VTA on 12/20/22, VTA began an investigation into the matter. including reviews of documentation and interviews with relevant staff. It validated all points made by NSI. After VTA executives found the complaint was valid, they refused to meet with NSI and dropped the matter.
2. Regulations not followed for the **invoice approval and payment process** for SBE/DBE firms:
 - a. Invoices were only partially paid, taking months to resolve full payment (not following invoicing regulations for accepting or rejecting in 15 days), violating From California Public Contract Code Sections 10261.5 through 10262.5, California Prompt Payment Act, and California Business and Professions Code, Section 7108.5.
 - b. Multiple requests for resolution made to VTA's Contract Compliance Manager by the HNTB+PB JV and by NSI Engineering were not addressed
 - c. The final payment to NSI was made 13 months after we were suspended
3. Regulations not followed for "full and open competition" in the **procurement process**:
 - a. Transit Project Solutions, the consulting firm owned by Mr. Salpeas, was hired as a Contractor on the BSVII Program, not through the required "full and open competition" bidding process, but through the use of an executive search firm, as would be done for a VTA employee. The \$3M contract was never publicly advertised, as required by the regulations in item b below.
 - b. It would be considered a "sole source" procurement since there was no bidding process. Unless a sole source procurement process is justified and documented per regulations, all procurements must be conducted in a manner providing full and open competition:
 - i. *FAR Part 6,*
 - ii. *2 CFR 200,*
 - iii. *41 U.S.C. 3301,*
 - iv. *FTA Circular 4220.1F, sections V.7.a(1)(c), VI.1.b, VI.3, and VI.6.a,*
 - v. *FTA Best Practices Procurement Manual, sections 2.4.2, 3.0, 4.3, 4.4, 4.5, and 4.6, and*
 - vi. *ABA Model Procurement Code 2000, sections 1-101, 3-201, 3-205/503/702/704, 4-205, 5-201.*
 - c. Sole source procurements are only allowed if the conditions below are met, none of which applied to the contract for Transit Project Solutions:
 - i. Only a single business can fulfill the requirements of a contract,
 - ii. The contract is published publicly prior to award and marked with an intent to sole source, so potential vendors can view and bid on the contract, and
 - iii. A sole source justification is documented per FTA Circular 4220.1F section VI.3.i.

Chronology of Issues on BSVII Experienced by NSI Engineering

After delivering significant value on the Program for 3 years, at the height of COVID NSI Engineering was illegally substituted without cause at the instigation of VTA, breaking multiple state and federal regulations. It nearly put us out of business and resulted in significant stress and emotional damage to my team and myself.

Chronology

This is the series of actions that resulted in payment issues and our contract being “suspended”:

1. 2018: VTA had **significant delays in paying invoices**. NSI raised these issues in early 2019, but they continued well beyond the date of NSI’s “suspension” of scope in September of 2020.
2. 2019-01-02: VTA **refused to escalate rates** annually on the Program due to internal negotiation issues with their union, thereby reducing profits for the entire PMT and all subs by half from that point until the PMT was allowed to bring rates up to the actual pay rates NSI raised the issue in May of 2019 but after investigation by Kevin Wilson from VTA’s Business Diversity Program and his discussions with VTA’s Procurement Officer, the request was denied in June of 2019 as it wasn’t contractually required – it was “subject to approval [by] VTA. At this point, VTA has decided to not consider those increases.”
3. 2020-01: Starting early in TO3, which contained errors by HNTB in the bill rates for NSI staff, VTA proceeded to **short pay invoices**: that persisted through the end of NSI’s billing on the Program. Many other firms were short-paid as well, threatening their ability to make payroll. This was discussed with our Prime and VTA’s Contract Compliance Manager several times in meetings, emails, and letters starting in early 2020. We were finally provided all back pay owed to us 13 months after our suspension in September 2020.
4. 2020-02: Takis Salpeas was brought on as a consultant to fill the role of BSVII Program Chief, which had previously been filled by Dennis Ratcliffe, a VTA Manager. Mr. Salpeas was provided over \$1M per year for 3 years, and was hired through an executive search firm as appropriate for a VTA employee, **not procured through a competitive bidding process** as required for a consultant when expending federal and state dollars.
5. 2020-03-13: Mr. Salpeas issued a **demand to the PMT for 25% and 50% cost reductions**. The PMT began planning how to accomplish that feat, with many staff members not approved to work going forward at all without prior approval. Ronak Naik, a VTA Manager, had indicated to Laura Uden earlier in the week that he didn’t expect the VTA QA Oversight function to be impacted by this reduction.
6. 2020-03-16: VTA (and all SCC offices) issued a **shelter-in-place order and closed offices** due to COVID.
7. On that same day, after close of business, Mr. Salpeas issued a **cost reduction demand**, requiring all but a small subset of the PMT to **stop work** starting the next day (3/17), proceeding for 3 weeks through 4/7. This was communicated to NSI on 3/17, providing no time for advance planning on our part. We couldn’t even bill our time for invoicing in March. Multiple dates were provided for reinstating normal project activities, eventually allowing Laura Uden to restart on 4/8, while the rest of her team waited until 5/4, 4 weeks after the stop work order. The PMT and its subs had been relying on the work as they’d dedicated their staff to the Program (as requested) and were waiting in readiness to get back to work, so they couldn’t quickly move them onto other projects.
8. 2020-04-03: All of these actions in items 1-3 and 5-7 caused **significant financial damage** to many firms on the PMT contract. NSI provided a formal letter to the Prime JV explaining this hardship.
9. 2020-08: NSI team was **ghosted by our boss**, Ni Lee, who failed to respond to multiple calls, voicemails, texts, and emails.

Chronology of Issues on BSVII Experienced by NSI Engineering

10. 2020-08-07: NSI team first heard rumors that **we would be replaced with another DBE firm without cause**. Through 12/14/20, the NSI team notified John White, VTA's Contract Compliance Manager, four times about the rumor (and the subsequent reality) of our replacement, but he took no action to investigate or address the issue with the Prime JV.
11. 2020-09-04: Ni Lee announced that she had **selected QEI as the new Quality Lead**, and they would start work on 10/1/20.
12. 2020-09-30: NSI team was sent a new task order extension and budget at 10:30 pm, and 6 minutes later received **formal notice to stop our work** on the Program as VTA was suspending our scope while they evaluated the needs and direction of the Program. This was a lie, as they had already agreed to contract with QEI to perform our scope.
13. 2020-10-01: The **first day of QEI's contract, with scope for quality oversight** (NSI's scope).

Resolution Attempts and Results

The NSI team filed multiple complaints about this substitution starting over 1000 days ago, but the actions of VTA executives showed them to be:

1. incapable of conducting required oversight in accordance with regulations,
2. unprepared to take discrimination complaints seriously,
3. disinclined to investigate such complaints until recently,
4. unavailable to meet with impacted businesses when VTA's own internal investigation found the complaints were justified, and
5. unwilling to resolve this complaint by discussing a solution.

We have persisted over 1,000 days since we first notified VTA's Contract Compliance Manager of the illegal substitution, through three further complaints to that same manager, six months since my latest (5th) complaint which was investigated and proven valid by VTA, and promises by VTA's executives to meet with me on four occasions which they then rescinded. Through all of this, VTA executives have demonstrated:

- a. gross negligence
- b. willful disregard
- c. incompetent mishandling of complaints, and
- d. intentional obfuscation and delays, including not providing the public records to which I have a right

I simply requested a meeting with VTA executives to explain what happened: it's unfortunate they can't even acknowledge my existence.

Given the seriousness of this and the damages inflicted on a well-performing DBE firm, VTA executives should be eager to resolve this issue. VTA's DBE Program says the agency is committed to ensuring nondiscrimination. Yet the unambiguous illegal substitution of my firm shows that VTA's words and actions aren't aligned. Mr. Richardson, the Assistant GM, refused to meet with me after agreeing four times to do so, and I felt it was time to inform the Board about this, which I did on 6/16/23. Representatives from Cindy Chavez' office attempted to contact Mr. Richardson, but as of 6/27/23 it appears he has declined to reply to them as well.

Closing Thoughts and Request

It appears that VTA senior executives are either afraid or indifferent. It's not a good look either way. I'm also not clear why Carolyn is available to call into the Board meeting but totally unavailable to provide any response in

Chronology of Issues on BSVII Experienced by NSI Engineering

this matter (she's been copied on my emails for the past 3 weeks, since I first warned VTA and the Prime JV that I would be filing a claim). This should be VTA's highest priority at the moment, but it clearly isn't.

According to federal regulations as well as agency policies and the basic tenets of a just society, they have a DUTY to address the findings that were proven by their own investigation, indicating that VTA is largely culpable in this entire series of events that harmed not only my firm, but dozens of other small and disadvantaged businesses. This complete lack of response or willingness to even have an initial conversation, or to hear from me directly about the issues if they don't wish to speak, let alone any attempt to actually take action to rectify the situation, is completely unacceptable.

The participation of my firm and similar SBE/DBE firms is the reason why VTA receives federal funding for major projects such as BSVII. As a small/DBE business owner, it feels like VTA wants to use us as window dressing to get those funds, but has no intent of protecting us or even following the federal regulations that accompany that funding. As a taxpayer, I'm paying their salaries and am a customer and stakeholder of the agency, and I deserve the most basic efforts at acknowledgement.

Before making this complaint, I understood the potential consequences, including my firm being blackballed and losing future work. But I stepped forward on behalf of not only my firm, but the dozens of other firms impacted by the harmful events VTA instigated on the BSVII Program.

As a taxpayer I'm ashamed of VTA executives for their unwillingness again and again to do the right thing. And I'm angry on behalf of my firm and all the others that have been harmed and those who continue to be harmed now and in the future. I'm upset by VTA's ignorance of the law and lack of competence in enforcing it, and their apparent intent to hide these issues, lie about meetings, and continue to delay resolution in an attempt to exhaust the energy and funds of those few firms that have the courage to come forward at risk to their continued existence.

I continue to hope that VTA executives will make some attempt to work towards a resolution, starting with meeting with me to hear my concerns as they promised to do four times but never followed through on.

I am requesting the assistance of VTA Board Members in getting VTA executives to conduct discussions with me and work towards some kind of resolution. I appreciate your assistance with this matter.

I wanted to add to the questions and discussion from Board Member Mark Turner on the BSVII Business Resource Program, regarding how a decision will be made on whether an organization is actually a small business, which will qualify it for support. The answer was provided that it would be based on the number of employees and level of revenue.

As a Professor who has taught courses on organizational management, including metrics and incentives, it's critical that the right measures be established in order to ensure as much equity and inclusion as possible in the Business Resource Program.

A measure of "level of revenue" is not helpful, as the value of that revenue really depends on the type of business. For a retail firm, most of the revenue is expended on products, which may be very expensive, so a company may have gross revenue of \$1M but only \$20K in profit (net). For a services firm, much of the revenue will be salaries and profit, but they may have a much higher profit margin.

I believe the correct approach for this is not to use a metric of "Gross Revenue" as discussed in the Board meeting, but rather to use "Net Revenue".