

**SANTA CLARA VALLEY  
TRANSPORTATION  
AUTHORITY  
DISADVANTAGE  
BUSINESS ENTERPRISE  
(DBE) PROGRAM**



*Solutions that move you*

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**Note: Please note that this program refers to the Code of Federal Regulations at 49 CFR 26**

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## DBE POLICY STATEMENT

### **Section 26.1, 26.23: Objectives/Policy Statement**

U.S. Department of Transportation (DOT) regulations set forth in 49 CFR Part 26 (Part 26; see Attachment 1), require that a recipient of DOT assistance (DOT Assistance) sign an assurance that the recipient will comply with Part 26. Having received DOT Assistance, Santa Clara Valley Transportation Authority (VTA) has signed an assurance and established a Disadvantaged Business Enterprise (DBE) Program (VTA DBE Program; see Part 26, section 26.21).

Per Part 26, section 26.23, this DBE Policy Statement sets forth VTA's DBE Program policy, policy objectives, and responsibilities for implementation of the VTA DBE Program.


It is VTA policy to ensure that DBEs (defined in Part 26) have an equal opportunity to receive and participate in DOT-assisted contracts. It is also VTA policy to actively pursue the following objectives of the VTA DBE Program:

1. Ensure nondiscrimination in both the award and administration of DOT-assisted contracts;
2. Create a level playing field that allows DBEs to compete fairly for DOT-assisted contracts;
3. Ensure VTA's DBE program applies to FTA-assisted contracts only and is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. Make appropriate use of the flexibility afforded to recipients of DOT Assistance in establishing and providing opportunities for DBEs.

Remi Awosanya, Contracts Compliance Manager, is VTA's DBE Liaison Officer responsible for implementing all aspects of the VTA DBE Program. VTA places the same priority on implementation of the VTA DBE Program as it does on compliance with all other legal obligations that stem from receiving DOT Assistance.

Upon execution, VTA will provide this DBE Policy Statement to (i) the VTA Board of Directors; (ii) VTA staff; and (iii) the DBE and non-DBE business communities that may perform work on VTA DOT-assisted contracts by:

1. Posting the DBE Policy Statement on the VTA website;
2. Making a copy of the DBE Policy Statement available to attendees of pre-bid meetings for solicitation involving DOT-assisted contracting opportunities; and
3. Including the VTA DBE Program details and the DBE Policy Statement as an appendix to the VTA Procurement, Contracts, and Business Diversity (PCBD) Procedures Manual.

  
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Carolyn Gondt, General Manager / CEO  
Santa Clara Valley Transportation Authority

Feb. 13, 2024  
Date

## **SUBPART A - GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

**VTA** is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L 102-240, 105 Stat. 1914, or Titles I, III, V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L 105-178, 112 Stat. 107.

**VTA** 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, III, and V of the TEA-21, Pub. L 105-178.

### **Section 26.5 Definitions**

**VTA** will use terms in this program that have their meanings defined in Part 26§26.5.

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

**VTA** 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 based on race, color, sex, or national origin.

In administering its DBE program, **VTA** 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 concerning individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record-Keeping Requirements**

Reporting to DOT: 26.11(b):

**VTA** will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FTA and FHWA as follows:

**VTA** will transmit to FTA and indirectly to FHWA, via Caltrans, semi-annually "Uniform Report of DBE Awards or Commitments and Payments", on June 1 and December 1 or as required, as described in Appendix B, to Part 26. **VTA** will similarly report the required information about participating DBE firms. All reporting will be done through the FTA and FHWA reporting system, or another format acceptable to FTA and/or FHWA as instructed thereby.

Subrecipients will report FTA pass-through grant-funded DBE participation to **VTA** as follows:

Subrecipients who receive FTA pass-through grants will report to **VTA** participation on a semi-annual basis (June 1 and December 1) each year, using the Uniform Report of DBE Awards/Commitments and Payments. These reports will capture DBE participation for DOT-assisted contracts awarded by sub-recipients and actual DBE attainments based on payments made to DBEs on DOT-assisted contracts closed within the respective reporting period. **VTA's** June 1 report shall include sub-recipient information from October 1 through March 31. The December 1 report shall include sub-recipient information from April 1 through September 30. Subrecipients shall comply with this section until all contracts awarded with FTA grant funds

are completed; grant funds are exhausted and/or returned to **VTA**.

Bidders List 26.11(c):

**VTA** will create a bidders list with information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. **VTA** collects this information on the form provided with the solicitations to bidders and offerors. The form directs all respondents and their subcontractors to report bidder's list information on the form and submit it with its bid or proposal documents. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on **VTA** DOT-assisted contracts, for use in helping to set overall goals. The bidder's list will include the name, address, DBE and non-DBE status, age of the firm, and annual gross receipts of firms, see Attachment 3, Sample Bidders List Collection Form.

Records retention and reporting:

**VTA** will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, **VTA** will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained following all applicable record retention requirements of **VTA** financial assistance agreement. Other certification or compliance-related records will be retained for a minimum of three (3) years from the date that a certified DBE becomes no longer certified unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

**VTA**, as a member of the California UCP established under §26.81, will report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged.

**Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: Each financial assistance agreement **VTA** signs with a DOT operating administration will include the following assurance:

**VTA** shall not discriminate based on race, color, national origin, or sex in the award and performance of any DOT-assisted contract or the administration of its DBE program or the requirements of 49 CFR Part 26. **VTA** 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 **VTA** 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 **VTA** of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language is to be used verbatim, as stated in 26.13(a).

Contract Assurance:

**VTA** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub-recipient, 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 **VTA** deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

This language is to be used verbatim, as stated in 26.13(b).

Enforcement:

If a contractor, sub-recipient, or subcontractor fail or refuse to include the 26.13(a) and/or 26.13(b) assurances verbatim in all the DOT-assisted contracts, subcontracts, or sub-recipient agreements, **VTA** may impose penalties and administrative sanctions for non-compliance as contained in Attachment 7, DBE Monitoring and Enforcement Mechanisms.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

**VTA** is required to have a DBE program meeting the requirements of this part as it will receive grants for planning, capital, and/or operating assistance and will award prime contracts, the cumulative total value of which exceeds \$250,000 in FTA and/or FHWA funds in a federal fiscal year. **VTA** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **VTA** is in compliance with it and Part 26. **VTA** will continue to carry out this program until all funds from DOT financial assistance have been expended. **VTA** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

**Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this DBE Program.

**Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for **VTA**:

Remi Awosanya  
Contracts Compliance Manager  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building B, San Jose, CA 95134-1906  
Phone: 408.321.5981/ Email: remi.awosanya@vta.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that **VTA** complies with all provisions of 49 CFR Part 26. The DBELO has **direct**,

independent access to the General Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. VTA will provide the DBELO with adequate staffing to implement the DBE program. The 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 this program.
3. Works with all departments to set overall triennial annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs promptly.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals) and monitor results.
6. Analyzes **VTA's** progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the GM/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the agency's updated directory on certified DBEs.

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

It is **VTA's** policy 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.

**VTA** has searched the website for the Federal Reserve Board, website at [www.federalreserve.gov/releases/mob](http://www.federalreserve.gov/releases/mob) to identify the minority-owned banks derived from the Consolidated Reports of Condition and Income filed quarterly by banks.

**VTA** will re-evaluate the availability of DBE Financial institutions on an annual basis. Information on the availability of such institutions is available upon request from the DBE Liaison Officer and available on the **VTA** website at [www.vta.org/OBDP](http://www.vta.org/OBDP).

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

**VTA** requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed according to their agreements, following all relevant federal, state, and local law.

Under 49 CFR §26.29, **VTA** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from **VTA**.

**VTA** ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

According to §26.29, **VTA** has selected the following method to comply with this requirement:

Retainage: §26.29(b)

The prime contractor 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 **VTA**. This clause applies to both DBE and non-DBE subcontracts.

**Section 26.31 Directory**

**VTA** is a certifying member of the California Unified Certification Program (CUCP). The CUCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. See Attachment 4 for DBE Directory and web link.

**Section 26.33 Overconcentration**

**VTA** has not identified that over-concentration exists in the types of work that DBEs perform.

**Section 26.35 Business Development Programs**

**VTA** has not established a business development program.

**Section 26.37 Monitoring and Enforcement Mechanisms**

**VTA** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in **VTA's** DBE program.

**VTA** actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. For Design-Build Contract: **VTA** will require prime contractor to submit documentation, in the form of progress reports described below, to show that the design-build prime contractor is meeting the contract goal for the project, or if the goal is not being met, the design-build contractor must submit satisfactory evidence that it has made good faith efforts, as described in 49 CFR Part 26.53 and also in Appendix A. This process will be monitored by **VTA** throughout the duration of the design-build project.

Progress Reports:

1. The design-build contractor will promptly provide **VTA** with the contract information upon selection of any DBE or other subcontractor not previously identified by the design-build contractor. During the course of the contract, differences must be explained and resolved by either making corrections or requesting a substitution.
2. The design-build contractor will provide DBE Progress Reports to **VTA** with each invoice and will provide a semi-annual report on or before July 1 and December 1 of each year of the contract. Each report must also include a narrative summary stating whether the design-build contractor is on target with respect to the DBE goal set forth in the contract, whether the goal has been exceeded (stating the amount of the excess), or whether the contractor is behind target (stating the amount of the deficit).

Monitoring Payments to DBEs and Non-DBEs:

**VTA** undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. *Posting prime contractor payments to a diversity tracking system database accessible to subcontractors to alert them to the start of the 7-day clock for payment*

2. *Use of an automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system*
3. *Other affirmative steps to monitor prompt payment and retainage requirements as described in the procurement documents.*

**VTA** requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **VTA's** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of **VTA** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

**VTA** proactively reviews contract payments to subcontractors including DBEs on a monthly/quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **VTA** by the prime contractor.

#### Prompt Payment Dispute Resolution

**VTA** will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from **VTA**. The prime contractor agrees to further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactory completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of **VTA**. This clause applies to both DBE and non-DBE subcontracts.

#### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

1. If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO and/or the **Office of Business and Diversity Programs (OBDP)** at [www.vta.org/obdp](http://www.vta.org/obdp) in writing to initiate complaint.
2. If filing a prompt payment complaint with the DBELO and/or the **Office of Business and Diversity Programs** does not result in timely and meaningful action by **VTA** to resolve prompt payment disputes, affected subcontractor may contact the responsible office.

#### **Region 9 Office:**

Federal Transit Administration  
San Francisco Federal Building  
90 - 7th Street, Suite 15-300  
San Francisco, CA 94103  
United States

#### Enforcement Actions for Noncompliance of Participants

**VTA** will provide appropriate means to enforce the requirements of §26.29. Under 49 C.F.R. § 26.13(b) (2016), the penalties imposed by the **VTA** may include, but are not limited to, the following:

1. Terminating the contract,
2. Withholding progress payments,
3. Assessing sanctions,
4. Imposing liquidated damages, (FAR 52.219-16 LD Subcontracting Plan disqualifying the contractor from bidding on future contracts, or other remedies the recipient deems appropriate.

Possible examples per §26.13 include, but are not limited to:

1. In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor,
2. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract,
3. Pay subcontractors directly and deduct this amount from the retainage owed to the prime,
4. Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met, and/or
5. Other penalties for failure to comply.

**VTA** will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

**VTA** reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is performed by the actual DBEs to which the work was committed. Work site monitoring is performed by DBELO, Project Staff and/or **Office of Business and Diversity Programs**. Contracting records are reviewed by DBELO, Project Staff, and/or **Office of Business and Diversity Programs** staff. **VTA** will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

#### **Section 26.39 Small Business Participation**

**VTA** adopted a Small Business Enterprise Program (SBE) in 2000. This Program was implemented to structure contracting requirements to facilitate competition by certified small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The Small Business Program is incorporated as Attachment 11 to this DBE Program. The program elements will be actively implemented to foster small business participation.

#### SBE Set-Aside Element

To enhance the SBE Program, **VTA** adopted the SBE set-aside program in June 2019.

1. Policy  
49 CFR Part 26, Section 26.39 "Fostering Small Business Participation", requires that the DBE Program include an element to structure contracting requirements to facilitate competition by small businesses on DOT-assisted contracts. The purpose of the SBE set-aside policy is to authorize solicitation of certain acquisitions for projects up to \$150,000 in value, and where it is reasonably expected that an adequate number of SBE

firms are available to compete for the work. In this instance, the project will be limited to certified small businesses.

## 2. General

- a. Small business set-asides may be conducted when a procurement of services, supplies, or other property falls within the "Small Purchase" threshold established in **VTA's** Small Purchases Policy (Document Number 500.030), that particular procurement action may be set aside exclusively for small businesses that have current certifications with **VTA**, the California Unified Certification Program ("CUCP"), and/or the California Department of General Services ("DGS").
- b. Procurement, Contracts, and Business Diversity (PCBD) staff shall apply the following analysis to all procurements utilizing Small Business Set-Asides:
  - i. To be eligible to participate in the Set-Aside Program, a business must be certified by **VTA**, CUCP, and/or DGS for the applicable North American Industry Classification System ("NAICS") codes for work being solicited (see 13 CFR Part 121).
  - ii. For business size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.
  - iii. When acquiring a product or service that could be classified in two or more industries with different size standards, PCMM staff shall apply the size standard for the industry that accounts for the greatest percentage of the contract price.
  - iv. If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.
- c. This Policy does not modify or in any way impact any public procurement requirements, including full and open competition requirements for solicitations, fair-and-reasonable-pricing determinations, or responsibility determinations.
- d. Notwithstanding any language in this Policy to the contrary, a procurement will not be eligible for the use of a set-aside exclusively for small businesses if either of the following circumstances applies:
  - i. There is not a reasonable expectation of obtaining offers from three or more responsible small businesses; or
  - ii. Market research indicates that offer(s) obtained from small businesses will not be competitive in terms of market price, quality, or delivery.

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

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

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

### **Section 26.45 Overall Goals**

**VTA** will establish an overall DBE goal covering a three-year Federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), **VTA** will submit its Overall Three-year DBE Goal to FTA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule

established by and posted to the website of the following administrating agency's:

FTA/FHWA: [DBE Three Year-Goal Setting Submission Schedules FTA \(dot.gov\)](#)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If **VTA** does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and **VTA** will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. **VTA** will use [a *Bidders List*, a *Disparity Study*, the *goal of another DOT recipient*, *DBE Directory information and Census Bureau Data*, or *other alternative method that complies with §26.45*] as a method to determine the base figure. **VTA** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. **VTA** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the **VTA** market.

In establishing the overall goal, **VTA** will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by **VTA** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before **VTA** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which **VTA** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, **VTA** will publish a notice announcing the proposed overall goal before submission to the FTA on August 1st. The notice will be posted on **VTA's** official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FTA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to FTA will include a summary of information and comments received, if any, during this public participation process and **VTA** responses.

**VTA** will begin using the overall goal on October 1 of the relevant period unless other instructions from FTA have been received.

#### Design-Build Project Goals

If permitted or required by the FTA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated. If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### Prior Operating Administration Concurrence

**VTA** understands that prior FTA concurrence with the overall goal is not required. However, if the FTA review suggests that the overall goal has not been correctly calculated or that the method employed by **VTA** for calculating goals is inadequate, FTA may, after consulting with **VTA**, adjust the overall goal or require that the goal be adjusted by **VTA**. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

#### **Section 26.47 Goal Setting and Accountability**

**VTA** cannot be penalized or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless **VTA** fails to administer its DBE program in good faith.

**VTA** understands that to be considered in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

**VTA** understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
3. **VTA** will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FTA for approval.

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

**VTA** will require transit vehicle manufacturers (TVM), as a condition of being authorized to bid or propose on any FTA-assisted transit vehicle procurements, to certify that they have complied with the requirements of §26.49.

1. **VTA** affirms that only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, 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.
2. A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout Part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
3. **VTA** is aware that failure to comply with the requirements set forth in Part 26, §26.49(a) may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
4. **VTA** will submit, within 30 days of making an award, the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

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

**VTA** will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as 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);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
6. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
7. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

8. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

**VTA** will arrange solicitations and times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

#### Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the total amount of a DOT- assisted contract.

#### **Section 26.53 Good Faith Efforts Procedures**

##### Demonstration of Good Faith Efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26. Attachment 6, Demonstration of Good Faith Efforts – Forms 1 through 5.

An Ad Hoc Good Faith Effort Committee comprised of designated **VTA** representatives will convene to determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The DBE Good Faith Effort Review Committee may be comprised of one representative each from the **Office of Business and Diversity Programs**, Engineering and Construction Division, and/or Procurement, Contract, and Business Diversity Department.

**VTA** will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - i. The names and addresses of DBE firms that will participate in the contract;

- ii. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - iii. The dollar amount of the participation of each DBE firm participating;
  - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - v. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - vi. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
3. For Design-Build Contract, a DBE Work Plan containing the detailed description of the design-build contractor's planned methodology for achieving the DBE Goal stated in the contract, including a description of the good faith efforts the design-build contractor intends to undertake to achieve that goal.
  4. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
  5. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures.

Administrative Reconsideration

Within 3 days of being informed by **VTA** that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Remi Awosanya  
 Contracts Compliance Manager  
 Santa Clara Valley Transportation Authority  
 3331 North First Street, Building B, San Jose, CA 95134-1906  
 Phone: (408) 321-5981 / Email: [Remi.Awosanya@vta.org](mailto:Remi.Awosanya@vta.org)

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 the reconsideration official to discuss the issue of whether bidder/offeror met the goal or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent 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.

In a "design-build" or "task order" contracting situation, in which **VTA** lets a master contract to a prime contractor, who in turn lets subsequent subcontracts for work of the project, **VTA** may establish a goal for the project. **VTA** will maintain oversight of the prime contractor's activities to ensure that they are conducted consistent with the requirements of this part.

Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to

supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of **VTA**. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if **VTA** agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. **VTA** determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides **VTA** written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that **VTA** has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to **VTA** a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **VTA**, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise **VTA** and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.*, safety), a response period shorter than five days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of **VTA** as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

**VTA** 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If **VTA** requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. **VTA** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of **VTA** may 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 when contract goal is established.

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

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j). OBDP shall have the final say in decisions involving how a DBE is counted or not counted and contractors must abide by its decision.

### **SUBPART D – CERTIFICATION STANDARDS**

#### **Section 26.61 – 26.73 Certification Process**

**VTA** 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. **VTA** makes all certification decisions based on the record facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Stella Becerra  
Office of Business Diversity Manager  
3331 North First Street, Building B, San Jose, CA 95134-1906  
Phone: 408-321-7534 / Email: [stella.becerra@vta.org](mailto:stella.becerra@vta.org)

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program, per §26.83(c)(2).

## **SUBPART E – CERTIFICATION PROCEDURES**

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

**VTA** is a member of the California Unified Certification Program (CUCP) administered by both the participating certifying and non-certifying agencies. The CUCP will meet all of the requirements of this section. The copy of the CUCP agreement is found in Attachment 9 to this program.

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

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. **VTA** will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

Once a firm has been certified as a DBE, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1).

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to the attention of **VTA** that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

#### **"No Change" Affidavits and Notices of Change**

The CUCP requires all DBEs owners to provide 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 DBE firm's original application for certification.

The CUCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of §26.83(j). The text 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 [*name of DBE firm*] has provided written notice to the **VTA** pursuant to §26.83(i). [*Name of DBE 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 \$23.98 million.

The CUCP requires DBEs to submit documentation with this affidavit regarding the firm's size and gross receipts (e.g., submission of federal tax returns).

The CUCP will notify all currently certified DBE firms of these obligations by U.S. mail on an annual basis. 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. The notification will likewise inform the DBE that 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, business size), the obligation to submit a notice of change applies.

**Section 26.85 Interstate Certification**

When a firm currently certified in its home state ("State A") applies to a member of this State's UCP ("State B") for DBE certification, the UCP will follow the procedures defined in §26.85(b). VTA follows the CUCP policies regarding interstate DBE applications.

**Section 26.86 Denials of Initial Requests for Certification**

If a currently certified DBE firm is decertified, or if an applicant firm's initial application is denied, the affected firm may not reapply until 12 months have passed from such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

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

In the event VTA proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. Attachment 10, Procedures for Removal of DBE's Eligibility and Certification Appeal, to this program sets forth these procedures in detail. To ensure separation of functions in a proposal to remove a firm's eligibility, a CUCP Reconsideration Official, as described in the CUCP Agreement in Attachment 9, will serve as the decision-maker in the required proceedings.

VTA will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

**Section 26.88 Summary Suspension of Certification.**

VTA will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

A DBE's certification will be immediately suspended without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

When a firm is suspended pursuant to §26.88 (a) or (b), VTA will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract,

and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the **VTA** information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of **VTA** to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

#### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal a decision of **VTA** in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of **VTA** including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) **VTA** failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
Disadvantaged Business Enterprise Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

The CUCP 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 the denial of its application was erroneous).

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

### **Section 26.101 Compliance Procedures Applicable to VTA**

**VTA** understands that if it fails to comply with any requirement of this part, **VTA** may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation**

**VTA** will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The California Legislature created the Public Records Act, mindful of the right of individuals to privacy, finding and declaring that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code, §6250) The California Legislature states public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as provided at Government Code §6253. A broad range of exceptions is provided in consideration of an individual's right to privacy or where otherwise excluded from disclosure by law.

Nothing shall be construed to require disclosure of records that are specifically identified as not to be disclosed in the Public Records Act, including, "Records Whose Disclosure Is Exempted or Prohibited," (Government Code §2654(k)). This provision identifies as exempt from disclosure under California law, "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege. Federal Regulations state that **VTA** must not release an individual's personal net worth (PNW) Statement, nor any documentation supporting it to any third party (other than CUCP or USDOT) without the written consent of the submitter. 49 CFR Part 26, Section 26.67(a)(2)(IV). Therefore, PNW Statements are protected under the DBE program.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or

suspension and debarment).

**VTA**, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. **VTA** understands that it is in noncompliance with Part 26 if it violates this prohibition.

## LIST OF ATTACHMENTS

<b>Attachment 1</b>	<b>Link to Regulations: 49 CFR Part 26</b>
<b>Attachment 2</b>	<b>Organizational Chart</b>
<b>Attachment 3</b>	<b>Bidder's List Collection Form</b>
<b>Attachment 4</b>	<b>Link to DBE Directory</b>
<b>Attachment 5</b>	<b>Overall Goal Calculations</b>
<b>Attachment 6</b>	<b>Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1 through 5</b>
<b>Attachment 7</b>	<b>DBE Monitoring and Enforcement Mechanisms</b>
<b>Attachment 8</b>	<b>DBE Certification Application</b>
<b>Attachment 9</b>	<b>California's UCP Agreement</b>
<b>Attachment 10</b>	<b>Procedures for Removal of DBE's Eligibility &amp; Certification Appeals</b>
<b>Attachment 11</b>	<b>Small Business Element Program</b>
<b>Attachment 12</b>	<b>Minority Owned Banks</b>

## ATTACHMENT 1

Link to Regulations: 49 CFR Part 26

[DBE Three Year-Goal Setting Submission Schedules | FTA \(dot.gov\)](#)

or

<https://www.ecfr.gov/cgi-bin/text-idx?SID=53cd5c89e0e9bdcfc93bae3ae3efb10c&mc=true&node=pt49.1.26&rgn=div5>

**ATTACHMENT 2**

Organizational Chart

**Carolyn Gonot**  
General Manager/CEO

**Nicole Chapman**  
Chief Procurement Officer of  
Procurement, Contracts &  
Business Diversity

**Ingrid Ward**  
Executive Assistant

**Vacant**  
Management Analyst

**Remi Awosanya**  
Contracts Compliance Manager/DBELO  
Compliance & Business Diversity  
Programs

**Emilija Basic**  
Construction Contract  
Compliance Manager

**Stella Becerra**  
Business Diversity Programs  
Manager

**Vishal Jha**  
Sr. SBE/DBE Analyst  
(BART Phase II)

**Judy Nguyen**  
Management Analyst

**Anne Baltao**  
Management Analyst

**Renato DeCastro**  
Construction Inspector  
Compliance

**Jennifer Mena**  
Management Analyst

**Ronald Griffiths**  
Construction Inspector  
Compliance

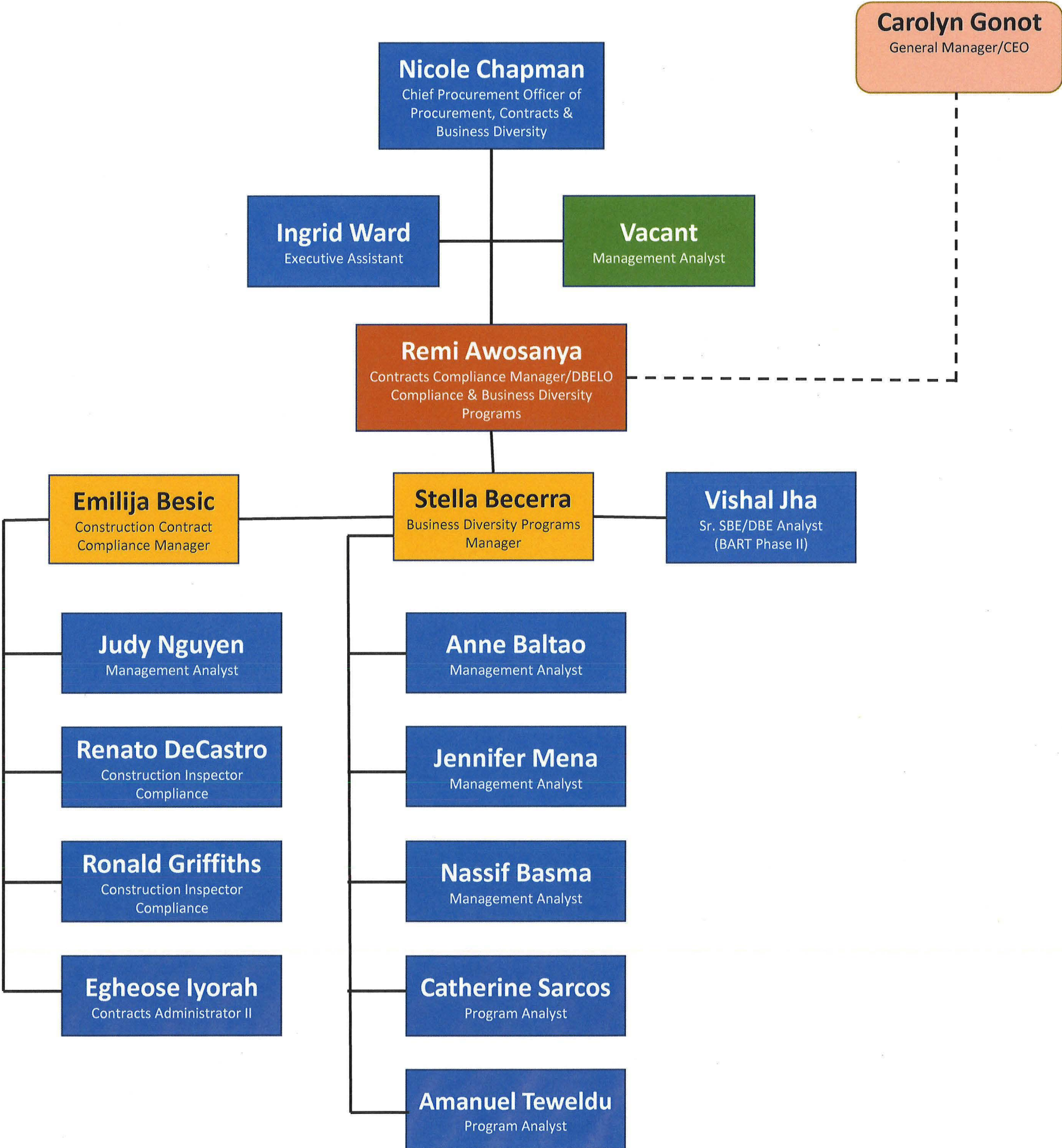
**Nassif Basma**  
Management Analyst

**Egheose Iyora**  
Contracts Administrator II

**Catherine Sarcos**  
Program Analyst

**Amanuel Teweldu**  
Program Analyst

ATTACHMENT 2  
ORGANIZATIONAL CHART



**ATTACHMENT 3**  
**SAMPLE BIDDER'S LIST COLLECTION FORM 5**  
**SUPPLEMENTAL CONTRACTOR and SUBCONTRACTOR INFORMATION**

**IMPORTANT INFORMATION**

- **ALL FIRMS FILL THIS OUT:** All firms bidding on prime contracts and bidding or quoting subcontractors are required to complete this form for the identified contract name and number. The form must be copied by the prime Bidder and distributed to all subcontractors. Prime Firm will then complete and sign the form in the final section below and submit the information to **VTA**.
- **SUBMITTAL DUE DATE:** Refer to Section 3.0 Instructions to Bidders for submittal information.
- **INSTRUCTIONS:** If you require additional forms or information, please contact the project Contract Administrator.

**A. ENTER PROJECT INFORMATION**

Contract Name \_\_\_\_\_

Contract Number \_\_\_\_\_

**B. ENTER CONTRACTOR/SUBCONTRACTOR INFORMATION**

Firm Name: \_\_\_\_\_

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

City, State, ZIP: \_\_\_\_\_

Phone #: \_\_\_\_\_

State License #: \_\_\_\_\_

DIR Registration #: \_\_\_\_\_

**C. ENTER DETAILS REGARDING CONTRACTOR/SUBCONTRACTOR LISTED ABOVE**

<b>Check One:</b>	<input type="checkbox"/> DBE _____ CUCP ID # <input type="checkbox"/> SBE <input type="checkbox"/> Non-SBE/Non-DBE Business Diversity Program <input type="checkbox"/> MWBE <input type="checkbox"/> DVBE <input type="checkbox"/> LGBTBE
<b>Age of Firm:</b>	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1-3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> more than 10 years
<b>Annual Gross Receipts (indicate bracket of income)</b>	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K to \$1M <input type="checkbox"/> \$1M to \$2M <input type="checkbox"/> \$2M to \$5M <input type="checkbox"/> Greater than \$5M
<b>Ethnicity</b>	<input type="checkbox"/> Asian <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Native American <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Caucasian <input type="checkbox"/> Other _____
<b>Gender</b>	<input type="checkbox"/> Male <input type="checkbox"/> Female

**D. FORM COMPLETED BY:**

Form Completed by (*print name and sign*): \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_ Email address: \_\_\_\_\_

**E. TO BE COMPLETED BY PRIME FIRM (BIDDER)**

Prime Firm (Bidder): \_\_\_\_\_

Was this firm selected for a subcontract or purchase for this contract?     Yes     No

If yes, enter the dollar value of this subcontract or purchase: \$ \_\_\_\_\_

Enter the description of this firm's work: \_\_\_\_\_

---

The subcontractor or contractor filling out this form will fill out Part A to Part D. The form is then finalized by the Prime Firm (Bidder) by completing Part E. The Prime Firm (Bidder) will then submit all the forms to **VTA** in accordance with the instructions provided in the Bid documents.

**PART A: ENTER PROJECT INFORMATION**

---

- Box 1: Enter contract name for which this form is being filled out.  
Box 2: Enter contract number for which this form is being filled out.

**PART B: ENTER CONTRACTOR/ SUBCONTRACTOR INFORMATION**

---

- Box 3 to Box 8: Enter contractor/subcontractor name, address, phone number, California State License Board Number (if not listed in Bid Form 3, and DIR registration number (if not listed in Bid Form 3).

**PART C: ENTER DETAILS REGARDING CONTRACTOR/SUBCONTRACTOR LISTED ABOVE**

---

- Box 9: Check one of the choices offered. SBE (Small Business Enterprise) or DBE (Disadvantaged Business Enterprise), if firm is certified. Refer to contract documents for additional information about certification. Business Diversity Programs Business Enterprise if checked for MWBE, DVBE, or LGBTBE.  
Box 10: Enter age of firm.  
Box 11: Check one of the choices offered to indicate bracket of income.  
Box 12: Check one of the choices offered to indicate ethnicity. If "Other", please enter information in space provided.  
Box 13: Indicate gender.

**PART D: FORM COMPLETED BY:**

---

- Box 14: Print and sign the name of the individual who provided the information in Parts A to C.  
Box 15: Enter date signed.  
Box 16: Provide email address of the individual who provided the information in Parts A to C.

**PART E: TO BE COMPLETED BY PRIME FIRM (BIDDER)**

---

- Box 17: Enter prime firm (bidder) name.  
Box 18: Answer the yes/no question.  
Box 19: If entered yes to Box 18, enter the dollar value of this subcontract or purchase.  
Box 20: Enter the description of the firm's work for the firm identified under B to C.
-

## ATTACHMENT 4

Link to California Unified Certification Program DBE Directory

<https://californiaucp.dbesystem.com/>

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## ATTACHMENT 5

### Overall Goal Calculations

VTA overall goal for FFY 2022 TO 2025 is 13% with 6% race conscious and 7% race neutral split.

Using the formula below, the DBE Goal is derived by dividing the number of ready, willing and able DBE firms identified for each work category by the number of all firms identified for each corresponding work category (relative availability), then weighting the relative availability for each work category by the corresponding work category weight (weighted ratio) and adding the weighted ratio figures together.

$$\text{Weighted Ratio} = \sum \frac{\text{Number of DBE Firms}}{\text{Number of All Firms}} \times \text{weight} \times 100$$

For the numerator: CUCP DBE Database of Certified Firms

For the denominator: 2019 U.S. Census Bureau's Business Patterns Database

**ATTACHMENT 6**

Demonstration of Good Faith Efforts or Good Faith

Efforts Plan Forms 1 thru 5

# FORM 1 – PROPOSED LIST OF SUBCONTRACTORS AND SUPPLIERS

TO BE COMPLETED BY BIDDER/PROPOSER

Bidder/Proposer shall list all first tier DBE and non-DBE firms that will perform any portion of the work on DBE Form 1. Bidders/Proposers are required to utilize Race Conscious (RC) DBE firms in the performance of this project. RC DBEs are groups that have been identified as statistically and significantly underutilized. All DBEs are included in the DBE contract goal: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women). *VTA* will achieve a percentage of its overall goal utilizing race neutral measures.

1. Bidder's/Proposer's Name:	2. Project Name:
3. Total Bid/Proposal Price:	4. Bid/Proposal Due Date:

	A	B	C	D	E	F	G
	NAME OF BIDDER/PROPOSER AND ALL SUBCONTRACTORS (1 <sup>ST</sup> TIER)	DESCRIPTION OF WORK	INDICATE BELOW FOR ALL SUBCONTRACTORS: C = Consultant Or Contractor S = Supplier <sup>1</sup> M = Manufacturer B = Broker <sup>1</sup> T = Trucker → JV = Joint Venture	BID PRICE	BID PRICE FOR DBE FIRMS	APPLY 60% for SUPPLIER/REGULAR DEALER OR INDICATE BROKER FEE OR COMISIONS	TOTAL DBE BID PRICE (COL# E OR F)
Bidder/ Proposer			Prime's \$ Amount with its own workforce			\$	\$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
<b>9. TOTAL BID/PROPOSAL PRICE</b> (Should equal Line #3 above)				\$	\$	\$	\$

<sup>1</sup>If a DBE firm listed in column D and E are regular dealers, enter 60% of the bid price in column G. If a DBE firm listed in column D and E are brokers, enter the total amount of the fees and/or commissions charges in column F. If a DBE business is listed to provide materials/supplies, only sixty percent (60%) of the cost for materials/supplies will be counted toward the DBE.

**FORM 2 – DBE AFFIDAVIT**

TO BE COMPLETED BY BIDDER/PROPOSER ONLY

**PART A: DBE GOAL DECLARATION**

**RC DBE GOAL ACHIEVED**

The Bidder/Proposer declares to the best of its knowledge, information and belief that by its efforts, it ACHIEVED a level of participation greater than or equal to the goal established for RC DBE participation.

The level achieved is \_\_\_\_\_ percent (\_\_\_\_\_ %)

**RC DBE GOAL NOT ACHIEVED**

The Bidder/Proposer declares to the best of its knowledge, information and belief that while it made efforts to achieve the RC DBE participation goal, it DID NOT ACHIEVE a level of RC DBE participation greater than or equal to the goal established for RC DBE participation.

The level achieved is \_\_\_\_\_ percent (\_\_\_\_\_ %)

While the Bidder/Proposer did exert efforts to achieve the goal, it was not successful. The Bidder/Proposer certifies that evidence of good faith efforts (GFE) will be submitted with the bid/proposal.

**PART B: SIGNATURE**

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
Date City State

Business Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

E-mail: \_\_\_\_\_

Phone: \_\_\_\_\_

# FORM 3 - DBE PROPOSED LOWER TIER SUBCONTRACTORS & SUPPLIERS

TO BE COMPLETED BY ALL SUBCONTRACTORS

Project Name: \_\_\_\_\_

IFB/RFP #: \_\_\_\_\_

All subcontractors listed on Form 1 that are subcontracting work are requested to list ALL (DBE and Non-DBE) lower tier subcontractors. All DBEs are included in the DBE contract goal: African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women (including Caucasian Women). ONLY RC DBEs listed in the Bidder/Proposer's bid or proposal will be counted towards the contract goal. *VTA* will achieve a percentage of its overall goal utilizing race neutral measures.

1. Subcontractor (Sub.):	2. Prime's Name:
3. Total Bid Price:	

	A	B	C	D	E	F	G
	NAME OF SUBCONTRACTOR AND ALL LOWER TIER SUBCONTRACTORS	DESCRIPTION OF WORK	INDICATE BELOW FOR ALL SUBCONTRACTORS: C = Consultant Or Contractor S = Supplier <sup>1</sup> M = Manufacturer B = Broker <sup>1</sup> T = Trucker JV = Joint Venture	BID PRICE	BID PRICE FOR DBE FIRMS	APPLY 60% for SUPPLIER/REGULAR DEALER OR INDICATE BROKER FEE OR COMISIONS	TOTAL DBE BID PRICE (COL# E OR F)
Subs			Your business' \$ Amount	\$	\$	\$	\$
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9. TOTAL BID/PROPOSAL PRICE (Should equal Line #3 above)				\$	\$	\$	\$

<sup>1</sup>If a DBE firm listed in column D and E are regular dealers, enter 60% of the bid price in column G. If a DBE firm listed in column D and E are brokers, enter the total amount of the fees and/or commissions charges in column F. If a DBE business is listed to provide materials/supplies, only sixty percent (60%) of the cost for materials/supplies will be counted toward the DBE.

# FORM 4 - BUSINESS DATA SHEET (DBE)

TO BE COMPLETED BY BIDDERS/PROPOSERS AND ALL SUBCONTRACTORS LISTED ON FORM 1 AND FORM 3

## PART A: BUSINESS DATA

1. Business Name: \_\_\_\_\_
2. Business Address: \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_  
(If different from above)

<small>Street</small>	<small>City</small>	<small>State</small>	<small>Zip</small>
<small>PO. Box or Street Address</small>	<small>City</small>	<small>State</small>	<small>Zip</small>
4. County (and State) Business is located in: \_\_\_\_\_ ( \_\_\_\_\_ )  
State
5. Name of Owner: \_\_\_\_\_  
Name Title
6. Owner(s) Ethnicity: \_\_\_\_\_
7. Phone: (      ) \_\_\_\_\_ - \_\_\_\_\_
9. Email Address: \_\_\_\_\_
8. Fax: (      ) \_\_\_\_\_ - \_\_\_\_\_
10. Age of Business: \_\_\_\_\_ Years \_\_\_\_\_ Months
11. If your business requires a license, complete below:
12. Business Annual Gross Receipts:
 

a. License Type _____	a. <input type="checkbox"/> Less than \$500,000
b. License # _____	b. <input type="checkbox"/> \$500,000 to \$1,000,000
c. Expires on _____	c. <input type="checkbox"/> \$1,000,000 to \$2,000,000
	d. <input type="checkbox"/> \$2,000,000 to \$5,000,000
	e. <input type="checkbox"/> Over \$5,000,000

## PART B: DBE CERTIFICATION STATUS

13. Is your business currently a DBE?
 

<b>Yes</b>	<b>No</b>
<input type="checkbox"/>	<input type="checkbox"/>

If "YES," attach a copy of your DBE Certification Letter and check all appropriate boxes below:

	<b>DBE</b>	<b>Non-DBE</b>
a. Certified by the California Unified Certification Program (CUCP)?	<input type="checkbox"/>	<input type="checkbox"/>
b. Certified by an organization outside of California?	<input type="checkbox"/>	<input type="checkbox"/>
c. Name of Certifying Agency: _____		

<b>Yes</b>	<b>No</b>
<input type="checkbox"/>	<input type="checkbox"/>
14. Is your business currently participating in a Joint Venture?
 

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

**If "YES," a copy of the Joint Venture Agreement must be attached to this Form.**
15. Name of Joint Venture and Partners. Is this business currently a certified DBE?
 

	<b>DBE</b>	<b>Non-DBE</b>
a. Business Name _____ Name of Certifying Agency _____	<input type="checkbox"/>	<input type="checkbox"/>
b. Business Name _____ Name of Certifying Agency _____	<input type="checkbox"/>	<input type="checkbox"/>
c. Business Name _____ Name of Certifying Agency _____	<input type="checkbox"/>	<input type="checkbox"/>

**PART C: WORK DESCRIPTIONS**

16. RFIQ, IFB, or RFP #: \_\_\_\_\_

17. Provide complete description of scope of work, services, and materials to be performed or furnished<sup>1</sup>:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAICS: \_\_\_\_\_

18. Will your business provide trucking company services on this project?  
Please mark one: Yes  No

**If marked YES, please complete items a. to c. below. If answered NO, answer "Not Applicable."**

- a. How many trucks does your company own? \_\_\_\_\_
- b. How many trucks does your company lease? \_\_\_\_\_
- c. How many trucks are registered to your company? \_\_\_\_\_

**PART D: SIGNATURE**

**The authorized signer declares that the information on this form and any attachments, are current, complete and accurate.**

Business Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Signature of Director, Officer, General Partner or similarly situated Principal of the Business

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>1</sup> The NAICS web site <http://www.bls.gov/bls/NAICS.htm>

# FORM 5 - DBE AFFIRMATION

TO BE COMPLETED BY BIDDER/PROPOSER AND AFFIRMED BY DBE SUBCONTRACTORS

Bidder/Proposer and DBE subcontractors, at any tier level, are required to complete this form and affirm that DBEs subcontractors will be utilized consistent with the level of participation referenced on the Form 1 (Proposed List of Subcontractors & Suppliers) and Form 3 (DBE Proposed Lower Tier Subcontractors & Suppliers). Bidder/Proposer and DBE subcontractors must sign this form attesting to the accuracy of the information provided.

1. RFP/IFB Number: \_\_\_\_\_
2. Project Name: \_\_\_\_\_
3. Name of the Prime: \_\_\_\_\_
4. Business Address: \_\_\_\_\_  
Street City State Zip
5. Name of Proposed DBE Business: \_\_\_\_\_
6. Business Address: \_\_\_\_\_  
Street City State Zip
7. Total DBE Dollars Committed: \$ \_\_\_\_\_  
(Amount should match \$ Amount listed for this business on Form 1 or Form 3)
8. Identify the scope of work to be performed by DBE subcontractor and provide applicable Northern America Industry Classification System (NAICS) code(s): <http://www.census.gov/eos/www/naics/>  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
NAICS: \_\_\_\_\_

### **Affirmation:**

Signatures of the authorized representatives of the Bidder/Proposer and the DBE business below, represents the commitment by both parties. A formal subcontract agreement between the Bidder/Proposer and the DBE subcontractor shall include the scope(s) of work and monetary commitment referenced above. DBE commitments in this document shall be a condition of contract award.

\_\_\_\_\_  
Name of Business

\_\_\_\_\_  
Authorized Signature of Business<sup>1</sup>

\_\_\_\_\_  
Typed or Printed Name of Signee

\_\_\_\_\_  
Title of Signee

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of DBE Business

\_\_\_\_\_  
Authorized Signature of DBE Business

\_\_\_\_\_  
Typed or Printed Name of Signee

\_\_\_\_\_  
Title of Signee

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Date

<sup>1</sup>  
Signature of the Contractor to which the DBE business will report to directly

## ATTACHMENT 7

### DBE Monitoring and Enforcement Mechanisms

The following sections contain the standards, policies, practices and procedures **VTA** uses to assess whether a contractor is in compliance with regulatory and contract requirements applicable to DOT-assisted projects:

#### 1. REGULATORY PROVISIONS

Including but not limited to:

- a. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises Department of Transportation Financial Assistance Programs; particularly, Subpart F, Compliance and Enforcement
- b. 49 CFR Part 29 – Government-wide Debarment and Suspension (Non-Procurement) and Government-wide Requirements for Drug-Free Workplace.
- c. 49 CFR Part 31 – Program Fraud Civil Remedies
- d. 13 CFR Part 121 – Small Business Size Standards

#### 2. CONTRACT REQUIREMENTS AND REMEDIES

Contract requirements and remedies are provided in this DBE Program and by administrative policies, practices and procedures requirements in each contract. All contractors, as a condition of participation in any DOT-assisted contract, shall agree to the terms of this DBE Program, and shall incorporate the DBE Program and the DBE administrative policies, practices, and procedures requirements into their contracts and subcontracts at all tiers.

##### a. CONTRACTS MANUAL PROVISIONS

**VTA** requires each project supported by DOT-assisted funds to include in its contract terms and conditions **VTA's** Contracts Manual, whose program and administrative requirements include, but not limited to:

##### b. AUDITING AND INSPECTION

**VTA** reserves the right to audit the records and inspect the facilities of its Contractors and any Subcontractors of any tier for the purpose of verifying the DBE participation and / or adherence to the DBE Program requirements. Contractors and Subcontractors shall permit access to their records at the request of **VTA**. Notice is hereby given that state, local and federal authorities may initiate or cooperate with **VTA** in auditing and inspecting such records

##### c. PROCUREMENT PROVISIONS

In addition to contracts manual provisions required by **VTA's** procurement department requires selected policies, practices and procedures to be defined in contract provisions in response to the circumstances associated with those categories of procurements. These policies, practices and procedures likewise provide the DBELO Officer, with monitoring and enforcement alternatives.

#### 3. FINDINGS OF NON-COMPLIANCE AND ADMINISTRATIVE SANCTIONS

Contractors found not to be compliant with any part of the DBE program requirements shall be notified of **VTA's** finding of Non-Compliance, in writing, by certified mail. The notice shall cite the DBE program requirement under which the contractor is non-

compliant, state the date of the findings and the grounds on which the finding was made and state the category of sanctions being imposed. Upon a finding of non-compliance, **VTA** may choose to impose sanctions including, but not limited to:

a. **MANDATORY DBE TRAINING**

Attendance at a DBE Training program will be mandatory for the owners, partners, or officers, and staff members of each firm, responsible for the management of DBE businesses and for the preparation of DBE related records and reports. Contractors will be responsible for all travel, meals, lodging and similar expenses. **VTA's Office of Business and Diversity Programs** will conduct the program.

b. **LIQUIDATED DAMAGES ASSESSMENT FOR NON-COMPLIANCE**

Liquidated damages (FAR 52.219-16 Liquidated Damages Subcontracting Plan). The amount of probable damages attributable to the Contractor's failure to comply will be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

c. **SUSPENSION OF PAYMENT**

**VTA** will suspend payment to the contractor of any monies held by it, as retained on the contract until the contractor becomes compliant.

d. **TERMINATION OF THE CONTRACT FOR DEFAULT**

**VTA** may terminate the contract for default.

e. **SUSPENSION AND DEBARMENT (49 CFR Part 29)**

Information concerning the existence of a cause for suspension or debarment will be reported, investigated and referred, when appropriate, to the proper official for consideration. After consideration, the official will issue the appropriate notice of proposed action.

**4. ENFORCEMENT MECHANISMS**

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

a. Suspension or debarment proceedings pursuant to 49 CFR Part 26

b. Enforcement action pursuant to 49 CFR part 31

c. Prosecution pursuant to 18 USC 1001.

**5. RESOLUTION OF DISPUTES BETWEEN CONTRACTOR AND SUBCONTRACTORS**

Disputes between the contractor and any lower tier DBE subcontractors, which cannot be settled by discussions between the parties involved, shall be settled as described herein. The contractor shall notify **VTA** of such dispute within ten 10 days of failure to resolve through written cure notice process described above.

These provisions do not apply to disputes between the Contractor and **VTA**. These provisions do not alter in any way or waive compliance with any provisions included in the Contract.

The contractor and its subcontractors shall include the dispute resolution provision in their contract. Both parties shall agree to proceed through informal meetings, mediation, or arbitration, or any combination thereof. Dispute submittals shall include terms and timeframes and the service or assistance to be employed.

a. **Mediation**

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. Submission to informal

mediation is voluntary by the parties, is not binding and offers advisory opinions only.

b. Arbitration

Should the parties fail to resolve any DBE related dispute arising out of or related to the contract via informal meetings or mediation, the parties are contractually obligated to submit the claims for arbitration within 120 days from date **VTA** is notified of dispute. Arbitration conducted pursuant to the contract shall be binding upon all parties to the arbitration. All arbitration is to be conducted in a manner consistent with section 1020 et seq. of the Public Contract Code and Section 1296 of Code of Civil Procedure.

Available mediation and arbitration services include:

The American Arbitration Association (213) 362-1900  
Dispute Resolution Center (818) 793-7174

The contractor shall incorporate this Section into each DBE subcontract related to work arising under a **VTA** contract and shall not incorporate by reference. Only when resolution of DBE disputes attempted through informal meetings, mediation, and/or arbitration has failed may the contractor formally request substitution of a DBE subcontractor.

c. Timeliness

Should the parties proceed to arbitration, moneys due, if any, shall be placed in a trust account. Such funds shall be released to the appropriate party within five (5) working days of a determination being issued by the arbitrator.

NOTE: Arbitration findings are binding upon the parties. However, the findings do not in any way relieve the contractor of its obligation to meet its DBE commitment.

**ATTACHMENT 8**

DBE Certification Application Form

Please visit the following link to access the DBE Certification Application Form:

<https://vta.sdbbe.com/?TN=vt>

a

**ATTACHMENT 9**

California UCP Agreement

<https://www.lawa.org/-/media/lawa-web/business-opportunities/updated-files/cucp-moa-final-approved-feb-12-2020-for-signature-2020225--signed.ashx>

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## ATTACHMENT 10

Procedures for Removal of DBE's Eligibility and Certification Appeals

<https://www.lawa.org/-/media/lawa-web/business-opportunities/updated-files/table-of-contents-and-signed-cucp-operational-procedures-021220.ashx>

## ATTACHMENT 11

### Small Business Element

**VTA** adopted a Small Business Program to promote small business participation on local, state, and federal projects. While DBEs have been eligible to receive an array of supportive services, all small businesses have benefited from the resources that have been developed and delivered to encourage small business participation, including networking and outreach events and business development workshops with the **VTA** Business Outreach Committee ("BOC"), which is comprised of transportation agencies in **VTA**'s market area. This program has a proven record of success in providing assistance to small businesses. It remains in effect and will continue to remain in effect as a part of the Small Business Program, in accordance with the requirements of 49 CFR Section 26.39, to ensure that small businesses have a maximum opportunity to participate on federally aided projects.

**ATTACHMENT 12**

Minority Owned Banks

[http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site\\_Content/Minority%20Bank%20listas%20of%209.2017.pdf](http://vtaorgcontent.s3-us-west-1.amazonaws.com/Site_Content/Minority%20Bank%20listas%20of%209.2017.pdf)