



SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

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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

The U.S. Department of Transportation (DOT) regulations set forth in 49 CFR Part 26 require recipients of DOT financial assistance to provide written assurance of compliance with all applicable DBE program requirements. As a recipient of DOT assistance, the Santa Clara Valley Transportation Authority (VTA) has executed this assurance and established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR §26.21.

Pursuant to 49 CFR §26.23 and consistent with the October 3, 2025, Final Rule, this DBE Policy Statement sets forth VTA's policy, objectives, and responsibilities for implementation of its DBE Program.

It is VTA's policy to ensure that DBEs, as defined in 49 CFR Part 26 and as reevaluated and confirmed eligible in accordance with 49 CFR §26.111, have an equal opportunity to receive and participate in DOT-assisted contracts. VTA is committed to administering its DBE Program in a manner that is consistent with federal regulations and current legal standards.

VTA will pursue the following objectives:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts in accordance with 49 CFR Part 26;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is applied only to DOT-assisted contracts and is narrowly tailored in accordance with applicable law and current federal regulatory requirements;
4. Ensure that only firms that meet the eligibility requirements of 49 CFR Part 26 and have been reevaluated and confirmed eligible under 49 CFR §26.111 are permitted to participate and be counted as DBEs;
5. Remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of eligible DBEs in all types of DOT-assisted contracting and procurement activities;
7. Assist in 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 while ensuring compliance with 49 CFR Part 26, including the requirements of 49 CFR §26.111 regarding DBE eligibility and participation.

Remi Awosanya, Contracts Compliance Manager, serves as VTA's Disadvantaged Business Enterprise (DBE) Liaison Officer (DBELO) and is responsible for the implementation, oversight, and administration of all aspects of the VTA DBE Program in accordance with 49 CFR Part 26, including the October 3, 2025, Final Rule and the requirements of 49 CFR §26.111. VTA assigns the same level of priority to the implementation and enforcement of its DBE Program as it does to compliance with all other legal obligations associated with receiving DOT financial assistance.

Upon execution, VTA will disseminate 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. Distribution will be carried out through the following methods:

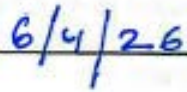
1. Posting the DBE Policy Statement on VTA's official website;
2. Making the DBE Policy Statement available at pre-bid and pre-proposal meetings for DOT-assisted contracting opportunities; and
3. Incorporating the DBE Program and DBE Policy Statement into the VTA Procurement, Contracts, and Business Development (PCBD) Procedures Manual.

VTA will ensure that all program implementation and outreach activities are conducted in a manner consistent with federal requirements, including ensuring that only DBE firms that have been reevaluated and confirmed eligible under 49 CFR §26.111 are recognized and counted for DBE program purposes.



A handwritten signature in blue ink, reading "Carolyn M. Gonot", is written over a horizontal line.

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



A handwritten date "6/4/26" is written in blue ink over a horizontal line.

Date

VTA receives funding directly from the Federal Transit Administration (FTA) and has established and implemented a distinct DBE Program for FTA-assisted projects. VTA also receives funds from the Federal Highway Administration (FHWA) as a subrecipient through the California Department of Transportation (Caltrans). VTA has adopted the Caltrans DBE Program for FHWA-assisted contracts and follows the Caltrans Local Assistance Procedures Manual.

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 – Objectives

The objectives of VTA's DBE Program are set forth in the Policy Statement and are implemented in accordance with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule. VTA will ensure that all program activities, including goal setting, participation, and reporting, are conducted in compliance with applicable federal requirements, including 49 CFR §26.111 regarding DBE eligibility and reevaluation.

Section 26.3 – Applicability

VTA is a recipient of U.S. Department of Transportation (DOT) financial assistance, including federal transit funds authorized under Title 49, United States Code. Accordingly, VTA is subject to and will comply with all applicable provisions of 49 CFR Part 26, as amended by the October 3, 2025, Final Rule.

This DBE Program applies to all DOT-assisted contracts administered by VTA. VTA will ensure that DBE program requirements are applied only to contracts receiving DOT financial assistance and that all participation counted toward DBE goals involves firms that have been reevaluated and confirmed eligible in accordance with 49 CFR §26.111.

Section 26.5 – Definitions

VTA will use terms in this DBE Program as defined in 49 CFR §26.5. All references to DBE firms within this program shall mean firms that meet the eligibility requirements of 49 CFR Part 26 and have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP) in accordance with 49 CFR §26.111.

Section 26.7 – Non-Discrimination Requirements

VTA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against any individual in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, VTA will not, directly or indirectly, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE Program. All program implementation activities will be conducted in a manner consistent with 49 CFR Part 26, including the October 3, 2025, Final Rule, and will ensure that only DBE firms confirmed eligible under 49 CFR §26.111 are counted toward DBE participation or used for compliance determinations.

Section 26.11 – Record-keeping Requirements

VTA has established a comprehensive record-keeping system to monitor and track DBE commitments and participation in accordance with applicable U.S. DOT regulations, including

the October 3, 2025, Final Rule. This system includes procedures for maintaining supporting documentation such as subcontractor commitments, executed subcontract agreements, and monthly payment reports submitted by prime contractors.

Consistent with 49 CFR §26.111, VTA will not count DBE participation, establish or update DBE goals, or use such data for compliance or goal attainment purposes until the California Unified Certification Program (CUCP) has completed reevaluation and confirmed the eligibility of DBE firms. Any DBE participation recorded prior to such reevaluation will be maintained for internal tracking and informational purposes only and will not be used for compliance determinations.

VTA utilizes a secure, web-based system to monitor and report DBE commitments, payments, and participation. The system incorporates controls to ensure that only participation from DBE firms that have been reevaluated and confirmed eligible under 49 CFR §26.111 is credited toward DBE contract goals and reported to the Federal Transit Administration (FTA).

VTA will ensure that all DBE participation reported to FTA reflects only firms that have completed the required reevaluation process. During any period in which CUCP reevaluation is incomplete, DBE participation data will be clearly identified as provisional and will not be used for compliance, reporting of goal attainment, or performance evaluation purposes.

VTA utilizes a secure, web-based system to monitor and report DBE commitments and payments. The system includes controls to ensure that only participation from DBE firms confirmed as eligible following reevaluation is credited toward DBE contract goals and reported to the Federal Transit Administration (FTA).

Reporting to DOT

VTA will provide data regarding its DBE Program to the U.S. Department of Transportation (DOT) as required by the applicable DOT operating administrations, in accordance with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule.

DBE Participation Reporting

VTA will report DBE participation to the Federal Transit Administration (FTA) and, where applicable, to the Federal Highway Administration (FHWA) through Caltrans, in accordance with federal reporting requirements.

Uniform Semi-Annual DBE Reporting

VTA will prepare and submit the “Uniform Report of DBE Awards or Commitments and Payments” on a semi-annual basis, due June 1 and December 1 of each year, or as otherwise required, consistent with Appendix B to 49 CFR Part 26. All reports will be submitted through the FTA and FHWA reporting systems, or other formats as directed by the respective agencies.

Consistent with 49 CFR §26.111, VTA will ensure that all DBE participation reported includes only firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP). Any DBE participation data associated with firms pending reevaluation will be tracked for internal purposes only and will not be included in official reports or used for compliance determinations.

VTA is committed to ensuring the accuracy, completeness, and integrity of all DBE reporting. All submissions will be prepared in accordance with Appendix B to Part 26 and VTA’s internal

reporting procedures, including applicable guidance for completing the Uniform DBE Report, to ensure full compliance with federal requirements.

Shortfall Analysis Reporting

If DBE participation falls short of VTA's approved overall DBE goal for a reporting period, VTA will conduct a shortfall analysis in accordance with 49 CFR §26.47(c), as amended by the October 3, 2025, Final Rule. The analysis will identify the factors contributing to the shortfall and establish appropriate corrective actions.

Consistent with 49 CFR §26.111, any shortfall analysis and corrective actions will be based solely on participation by DBE firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP). Participation by firms pending reevaluation will not be included in compliance determinations or shortfall calculations.

VTA will submit the required shortfall analysis to the Federal Transit Administration (FTA) by December 30 of the applicable year, or as otherwise directed by FTA. VTA will also follow its established written procedures for conducting shortfall analyses, as outlined in Attachment 13: Santa Clara Valley Transportation Authority (VTA) DBE Shortfall Analysis Process.

Subrecipient Reporting Requirements

Subrecipients receiving FTA pass-through funding will report DBE participation to VTA in accordance with 49 CFR Part 26 and the October 3, 2025, Final Rule.

Subrecipients must submit the Uniform Report of DBE Awards/Commitments and Payments on a semi-annual basis (June 1 and December 1). These reports must include DBE participation for DOT-assisted contracts and actual DBE attainments based on payments made during the reporting period.

All reported DBE participation must be limited to firms that have been reevaluated and confirmed eligible under 49 CFR §26.111. Participation by firms pending reevaluation shall not be included in reported DBE attainment or used for compliance purposes.

Bidders List

In accordance with 49 CFR §26.11(c), as amended by the October 3, 2025, Final Rule, the Santa Clara Valley Transportation Authority (VTA) will maintain a comprehensive Bidders List containing information on all DBE and non-DBE firms that submit bids or quotes on DOT-assisted contracts.

Purpose

The purpose of the Bidders List is to collect accurate and complete data on firms seeking to participate in VTA's DOT-assisted contracting opportunities. This data will be used to support the development of VTA's overall DBE goals in accordance with 49 CFR §26.45. Consistent with 49 CFR §26.111, VTA will ensure that any data used for goal setting reflects only firms that have been reevaluated and confirmed eligible as DBEs by the California Unified Certification Program (CUCP). Data associated with firms pending reevaluation may be maintained for informational purposes but will not be used for compliance or goal-setting determinations.

Bidder Requirements

As part of each bid or proposal submission on a DOT-assisted contract, all prime bidders are required to complete and submit the Bidders List Collection Form (see Attachment 3). This form must include information for all subcontractors who submitted bids or quotes to the prime contractor, regardless of whether they were selected. This requirement applies to both DBE and non-DBE firms.

Data to be Collected

The Bidders List will include, at a minimum, the following information for each firm:

- Legal name of the firm
- Mailing address
- DBE or non-DBE status (as verified through CUCP and consistent with 49 CFR §26.111)
- Age of the firm
- Annual gross receipts (reported in ranges)
- Type(s) of work bid or quoted
- Applicable NAICS code(s)
- Race and gender of the firm's majority owner(s), where applicable

VTA will ensure that the Bidders List is maintained in a manner consistent with federal requirements and used appropriately to support DBE Program administration, including goal setting, while ensuring compliance with 49 CFR Part 26 and the October 3, 2025, Final Rule.

Submission Instructions

Instructions for completing the Bidders List Collection Form will be included with each solicitation. All bidders, including their subcontractors, are required to fully complete and submit the form with their bid or proposal package. Failure to submit a completed form may result in a determination of non-responsiveness.

System Entry and Reporting

VTA will enter Bidders List data into the applicable USDOT data management system in accordance with federal reporting requirements and timelines, including submission no later than December 1 following the fiscal year in which the relevant contract was awarded, or as otherwise directed by USDOT.

In design-build contracting scenarios, where subcontracts are awarded throughout the life of the contract pursuant to 49 CFR §26.53(e), VTA will ensure that Bidders List data is entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Consistent with 49 CFR §26.111, VTA will ensure that any Bidders List data used for DBE goal setting or compliance purposes reflects only DBE firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP). Data related to firms pending reevaluation will be maintained for informational purposes only and will not be used for compliance determinations.

Records Retention and Reporting

VTA will maintain records documenting compliance with 49 CFR Part 26, including certification and program administration requirements. At a minimum, VTA will retain complete certification files, including application materials, affidavits of no change, change notices, and on-site review documentation.

All certification and compliance-related records will be retained in accordance with applicable federal and VTA financial assistance agreement requirements. Unless otherwise specified, such records will be maintained for a minimum of three (3) years following the date a firm is no longer certified as a DBE, or longer if required by the applicable funding agreement.

Unified Certification Program (UCP) Reporting

As a member of the California Unified Certification Program (CUCP), established pursuant to 49 CFR §26.81, VTA will support statewide reporting requirements and ensure that certification data is maintained accurately.

VTA will ensure that all DBE certification data used for reporting reflects firms that have been reevaluated and confirmed eligible in accordance with 49 CFR §26.111. VTA will coordinate with CUCP to support reporting to the U.S. Department of Transportation, including information on the percentage and geographic distribution of certified DBE firms controlled by:

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

All reporting will be conducted in accordance with federal requirements and applicable guidance issued under 49 CFR Part 26, as amended by the October 3, 2025, Final Rule.

Section 26.13 – Federal Financial Assistance Agreement

VTA has executed the assurances required under 49 CFR §26.13, as amended by the October 3, 2025, Final Rule. These assurances apply to all DOT-assisted contracts and their administration.

Assurance Requirement

Each financial assistance agreement that VTA enters into with a U.S. Department of Transportation (DOT) operating administration will include the following assurance, as required by 49 CFR §26.13(a), which must be incorporated verbatim:

VTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. 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 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 assurance will be used without modification, as required by 49 CFR §26.13(a).

VTA will implement and enforce this assurance in a manner consistent with all applicable provisions of 49 CFR Part 26, including the requirements of 49 CFR §26.111, ensuring that only DBE firms that have been reevaluated and confirmed eligible are counted for DBE participation and compliance purposes.

Contract Assurance

VTA will ensure that the contract assurance required under 49 CFR §26.13(b), as amended by the October 3, 2025, Final Rule, is included verbatim in each DOT-assisted contract and in each subcontract executed by the prime contractor.

The following clause will be incorporated without modification:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted 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.

Consistent with this requirement, VTA may exercise contractual remedies for non-compliance, including but not limited to:

1. Withholding progress payments;
2. Assessing sanctions;
3. Imposing liquidated damages, where applicable; and/or
4. Determining the contractor to be non-responsible for future contracting opportunities, consistent with applicable law and policy.

This language will be used verbatim, as required by 49 CFR §26.13(b).

Enforcement

VTA will ensure that all contractors, sub-recipients, and subcontractors incorporate the required assurances under 49 CFR §26.13(a) and §26.13(b) into all DOT-assisted contracts and subcontracts. Failure or refusal to include these required assurances or to comply with their provisions will constitute non-compliance with federal requirements.

In such cases, VTA will take appropriate enforcement actions consistent with 49 CFR Part 26 and the October 3, 2025, Final Rule, including the imposition of administrative remedies and sanctions as outlined in Attachment 7 (DBE Monitoring and Enforcement Mechanisms).

VTA will administer all enforcement actions in a manner consistent with federal regulations, including ensuring that DBE participation credited for compliance purposes involves only firms that have been reevaluated and confirmed eligible under 49 CFR §26.111.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 – DBE Program Updates

VTA maintains a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule. As a recipient of Federal Transit Administration (FTA) and/or Federal Highway Administration (FHWA) financial assistance, VTA is required to implement a DBE Program when it anticipates awarding DOT-assisted prime contracts with a cumulative value exceeding \$250,000 in a federal fiscal year.

VTA is not eligible to receive DOT financial assistance unless its DBE Program has been approved by the U.S. Department of Transportation (DOT) and is being implemented in compliance with 49 CFR Part 26. VTA will continue to carry out its DBE Program for the duration of all DOT-funded activities.

While VTA is not required to submit routine updates to its DBE Program document, any significant changes, including those required by regulatory updates such as the October 3, 2025, Final Rule, will be submitted to DOT for review and approval. VTA will ensure that all program elements, including goal setting, participation, reporting, and compliance determinations, are consistent with 49 CFR §26.111, including the requirement that only DBE firms that have been reevaluated and confirmed eligible are counted for DBE program purposes.

Section 26.23 – Policy Statement

The DBE Policy Statement is included at the beginning of this program and reflects VTA's commitment to compliance with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule.

Section 26.25 – DBE Liaison Officer (DBELO)

The following individual has been designated as VTA's DBE Liaison Officer (DBELO):

Remi Awosanya

Contracts Compliance Manager / DBELO
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

The DBELO is responsible for the implementation, oversight, and administration of all aspects of VTA's DBE Program and for ensuring compliance with 49 CFR Part 26, including the October 3, 2025, Final Rule and 49 CFR §26.111. The DBELO has direct and independent access to the General Manager regarding DBE Program matters. An organizational chart identifying the DBELO's position within VTA is included in Attachment 2.

VTA will provide adequate staffing and resources to support the DBELO in carrying out DBE Program responsibilities.

DBELO Duties and Responsibilities

The DBELO, in coordination with appropriate VTA staff, is responsible for:

1. Collecting, analyzing, and reporting DBE data to DOT, ensuring that only participation by DBE firms reevaluated and confirmed eligible under 49 CFR §26.111 is reported for compliance purposes;
2. Reviewing contracts, procurements, and requisitions to ensure compliance with DBE requirements;
3. Developing and implementing overall DBE goals in accordance with 49 CFR §26.45, using only data from DBE firms confirmed eligible under 49 CFR §26.111;
4. Ensuring timely and effective dissemination of bid notices and requests for proposals to DBE firms;
5. Identifying contracting opportunities for DBE participation and establishing appropriate race-neutral and, where applicable, contract-specific DBE goals;
6. Monitoring DBE participation and contract performance to ensure compliance with program requirements;
7. Evaluating VTA's progress toward DBE goal attainment and identifying measures to improve participation;
8. Participating in pre-bid and pre-proposal meetings to provide DBE-related guidance;
9. Advising executive leadership on DBE Program performance, compliance, and policy matters;
10. Evaluating and determining contractor compliance with Good Faith Efforts requirements in accordance with 49 CFR §26.53;
11. Providing DBEs with technical assistance, including guidance on bidding, bonding, and insurance;
12. Developing and participating in DBE training and outreach initiatives;
13. Coordinating with the California Unified Certification Program (CUCP) to verify DBE eligibility and ensure compliance with 49 CFR §26.111;
14. Conducting outreach to DBEs, community organizations, and industry stakeholders to promote participation opportunities; and
15. Maintaining and utilizing the CUCP DBE Directory, ensuring that only firms confirmed eligible through reevaluation are recognized for DBE Program purposes.

VTA will ensure that all DBE Program administration activities are conducted in full compliance with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule, and that all DBE participation credited toward goals or compliance determinations involves only firms that have been reevaluated and confirmed eligible under 49 CFR §26.111.

Section 26.27 – DBE Financial Institutions

It is the policy of VTA to identify and evaluate the availability of financial institutions owned and controlled by socially and economically disadvantaged individuals, including DBE-owned institutions, and to make reasonable efforts to utilize such institutions in connection with DOT-assisted contracts, consistent with 49 CFR Part 26, as amended by the October 3, 2025, Final Rule.

VTA will encourage prime contractors and subcontractors to make use of these institutions, where appropriate and available, as part of their contract performance.

VTA maintains and provides information on DBE-owned and minority-owned financial institutions to bidders and proposers to support these efforts. Consistent with 49 CFR §26.111, VTA will

ensure that any identification of DBE-owned institutions for DBE Program purposes reflects firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP), where applicable.

Information on Minority Depository Institutions is available through the Federal Deposit Insurance Corporation (FDIC) at: <https://www.fdic.gov/minority-depository-institutions-program/minority-depository-institutions-list>

Section 26.29 – Prompt Payment Mechanisms

VTA requires that all subcontractors performing work on DOT-assisted contracts be promptly paid for work performed in accordance with their contractual agreements and applicable federal, state, and local laws, including 49 CFR §26.29, as amended by the October 3, 2025, Final Rule.

Pursuant to 49 CFR §26.29, VTA has established contract provisions requiring prime contractors to pay subcontractors for satisfactory performance no later than seven (7) days from receipt of each progress payment from VTA. Any delay or postponement of payment may occur only for good cause and with prior written approval from VTA.

Consistent with California Business and Professions Code §7108.5, contractors and subcontractors must pay their subcontractors within seven (7) days of receipt of each progress payment, unless otherwise agreed to in writing. In the event of a good faith dispute, the amount withheld shall not exceed 150 percent of the disputed amount. Violations of these requirements may result in penalties, sanctions, and remedies as provided under applicable law.

Any delay or postponement of payment beyond the required timeframe must be supported by good cause and receive prior written approval from VTA. Failure to comply with prompt payment requirements without such approval will constitute noncompliance and may result in administrative sanctions. VTA may, where appropriate, withhold payments to the prime contractor until compliance with prompt payment requirements is achieved.

VTA's DBE Program includes proactive monitoring and oversight mechanisms to ensure compliance with prompt payment and return of retainage requirements. VTA will not rely solely on subcontractor complaints but will actively monitor contractor performance to ensure adherence to these requirements.

Consistent with 49 CFR §26.111, VTA will ensure that prompt payment monitoring and compliance determinations involving DBE subcontractors apply only to firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP) for DBE Program purposes.

Required Contract Clause

VTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from VTA. Any delay or postponement of payment may occur only for good cause and with prior written approval from VTA. This requirement applies to all subcontractors, including both DBE and non-DBE firms. VTA will ensure that this requirement is enforced in accordance with 49 CFR Part 26 and applicable state law.

Prompt Payment Dispute Resolution

VTA will implement procedures to resolve disputes regarding whether subcontractor work has been satisfactorily completed for purposes of 49 CFR §26.29, as amended by the October 3, 2025, Final Rule.

VTA requires that prime contractors pay each subcontractor for satisfactory performance no later than seven (7) days after receipt of payment from VTA. Prime contractors must also return retainage to subcontractors within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment or release of retainage may occur only for good cause and with prior written approval from VTA. These requirements apply to all subcontractors, including both DBE and non-DBE firms.

VTA will evaluate disputes related to satisfactory completion of work in a timely and objective manner, including review of contract terms, payment records, inspection reports, and other relevant documentation. Where appropriate, VTA may involve project management, contract administration, and compliance staff to determine whether payment is due and to ensure adherence to prompt payment requirements.

Consistent with 49 CFR §26.111, any DBE-related compliance determinations under this section will apply only to firms that have been reevaluated and confirmed eligible by the California Unified Certification Program (CUCP) for DBE Program purposes.

Prompt Payment Complaints

Complaints related to prompt payment requirements will be addressed through the following process:

1. Subcontractors who are unable to resolve payment issues directly with the prime contractor, or who are not comfortable doing so, may submit a written complaint to the DBE Liaison Officer (DBELO) or the Office of Business and Diversity Programs (OBDP) via VTA's official website or designated contact channels.
2. Upon receipt of a complaint, VTA will promptly investigate the matter, including review of relevant documentation and communication with the parties involved, and will take appropriate action to facilitate resolution in accordance with 49 CFR §26.29 and applicable contract provisions.
3. If a subcontractor believes that VTA has not taken timely or appropriate action to resolve a prompt payment dispute, the subcontractor may contact the Federal Transit Administration (FTA) Regional Office:

**FTA Region IX Office
Federal Transit Administration
San Francisco Federal Building
90 7th Street, Suite 15-300
San Francisco, CA 94103**

VTA will administer this process in a manner consistent with federal requirements, including ensuring proactive monitoring and enforcement of prompt payment provisions under 49 CFR Part 26.

Retainage: §26.29(b)

In accordance with §26.29(b) of the DBE regulations, VTA will ensure that any retainage withheld from prime contractors or subcontractors is released in a timely manner once the work has been satisfactorily completed. VTA will not withhold retainage from prime contractors, nor will it allow prime contractors to withhold retainage from subcontractors, beyond the timeframes necessary to ensure completion of the work. This process is intended to ensure prompt payment and fair treatment of all parties involved in the contracting process

VTA will include the following clauses in each DOT- assisted prime contract:

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.

Enforcement Actions for Noncompliance of Participants 26.29(d)

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 Liquidated Damages Subcontracting Plan (<https://www.acquisition.gov/far/52.219-16>), 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.

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. Should VTA determine that overconcentration exists, VTA will obtain the approval of the concerned DOT Operating Administration of its determination, and the measures devised to address it. Once these measures are approved, they will become part of VTA's DBE Program

Section 26.35 – Business Development Programs

Mentor-Protégé Program

For certain VTA contracts, including federally assisted contracts funded in whole or in part by the Federal Transit Administration (FTA), VTA may establish a Mentor-Protégé Program intended to provide participating firms with developmental assistance in technical, managerial, operational, and business-related disciplines associated with transportation infrastructure projects.

The purpose of the Mentor-Protégé Program is to support the development of long-term small business capacity within the Bay Area construction, engineering, professional services, and transportation contracting community. The program is intended to assist participating firms in strengthening their technical expertise, operational capabilities, business development practices, estimating, project management, and overall organizational capacity to support future transportation and public infrastructure opportunities.

The mentoring relationship is intended to:

- Support the development of sustainable business practices;
- Enhance technical and managerial capabilities;
- Assist participating firms in competing for subcontracting and prime contracting opportunities;
- Encourage long-term industry growth and workforce development; and
- Foster collaborative relationships between experienced industry firms and emerging businesses.

VTA may support and participate in the Mentor-Protégé Program as appropriate and consistent with applicable federal, state, and local requirements.

Program Activities

The program may include pro-bono guidance, technical assistance, educational workshops, and training activities related to:

- Consulting engineering;
- Program and project management;
- Construction management;
- Estimating and scheduling;
- Operations and contract administration;
- Business development and marketing;
- Workforce development; and
- Other transportation-related disciplines.

Training sessions or educational materials developed through the program may be recorded or documented and made available to VTA for educational or outreach purposes, subject to applicable confidentiality, proprietary information, and intellectual property considerations.

Program Administration

The Contractor shall establish and maintain a comprehensive Mentor-Protégé Program throughout the duration of the contract. The Contractor may identify new participants during successive phases or years of the contract, subject to VTA review and approval.

If participating firms elect not to participate or complete the program, the Contractor shall work cooperatively with VTA to identify additional eligible firms that may benefit from participation in the program.

The program may incorporate construction management coursework, technical instruction, industry workshops, or related professional development activities. Such activities may be provided directly by the Contractor or through qualified third-party educational or training providers.

The Contractor shall submit the proposed names and number of participating firms to VTA for review and approval.

To the extent practicable, the Contractor is encouraged to provide participating firms with opportunities to gain relevant project experience and exposure to future business opportunities associated with transportation infrastructure work.

Participation and Compliance

Participation in the Mentor-Protégé Program shall be voluntary and administered consistent with:

- 49 CFR Part 26;
- The U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program Interim Final Rule (IFR) effective October 3, 2025;
- Applicable FTA guidance;
- VTA's Small Business Enterprise (SBE) Policy; and
- Other applicable federal, state, and local requirements.

Nothing in this program shall:

- Establish quotas or preferences inconsistent with applicable law;
- Guarantee contract awards or subcontracting opportunities;
- Require utilization of any specific firm; or
- Modify the Contractor's obligations under applicable procurement or contracting requirements.

Mentor-Protégé Memorandum of Understanding (MOU)

Each Mentor and Protégé participating in the program shall execute a written Memorandum of Understanding (MOU) that includes, at a minimum, the following:

1. Program Goals and Objectives
The Mentor and Protégé shall jointly develop measurable goals, objectives, and

- anticipated outcomes for the mentoring relationship.
2. Mentor Resources and Participation
Identification of Mentor personnel, including executive, managerial, technical, or training staff who will provide guidance, education, counseling, or technical assistance to the Protégé.
 3. Documentation and Reporting
Documentation of mentoring activities through Monthly Activity Reports or other periodic reporting acceptable to VTA. Reports shall summarize activities completed, training provided, progress achieved and planned future activities. VTA and its authorized representatives may monitor program activities, meetings, counseling sessions, or training activities for purposes of program oversight and evaluation.
 4. Duration of MOU
The term of the MOU shall generally be one (1) year unless otherwise extended by mutual written agreement of the parties.
 5. Progress Reports and Final Evaluation
The Mentor and Protégé shall submit semi-annual progress reports summarizing completed activities, progress toward established objectives, and future planned activities. A final report shall be submitted at the conclusion of the MOU term and may include accomplishments, challenges, and lessons learned associated with the mentoring relationship. Reports shall generally be submitted within thirty (30) calendar days following the applicable reporting period unless otherwise approved by VTA.

Section 26.37 – Monitoring and Enforcement Mechanisms

VTA implements and carries out appropriate monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants, including requirements related to prompt payment, commercially useful function (CUF), reporting, and contract compliance, and describes these mechanisms within VTA's DBE Program.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, VTA will monitor and track only DBE participation performed by firms that are currently certified and eligible under applicable 49 CFR Part 26 requirements, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

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 such attainments to contract commitments, where applicable and authorized under federal regulations.

For Design-Build contracts where a DBE contract goal is established in accordance with applicable federal authorization and 49 CFR Part 26 requirements, VTA will require the prime contractor to submit documentation demonstrating compliance with the contract goal throughout the duration of the project. If the contract goal is not being met, the contractor must provide documentation demonstrating good faith efforts consistent with 49 CFR §26.53 and Appendix A to Part 26.

Progress Reports

1. The design-build contractor shall promptly provide VTA with subcontractor participation information upon selection of any DBE or other subcontractor not previously identified by the contractor. Any differences between committed participation and actual utilization must be explained and resolved through appropriate corrective action, contract modification, or approved substitution procedures.

2. The design-build contractor shall provide DBE participation progress reports with each invoice submission and shall also submit semi-annual reports on or before July 1 and December 1 of each contract year. Each report shall include:
 - Actual payments made to DBE firms;
 - A comparison of actual participation to committed participation, where applicable;
 - Identification of any participation shortfalls or changes in utilization; and
 - A narrative summary indicating whether the contractor is on track to meet the applicable DBE contract goal, has exceeded the goal, or is below the anticipated participation level, including an explanation of any deficiencies and corrective actions being implemented.

Monitoring Payments to DBEs and non-DBEs

VTA undertakes ongoing monitoring of prime contractor payments to subcontractors over the course of covered contracts to ensure compliance with applicable prompt payment, retainage, reporting, and contract administration requirements contained in 49 CFR Part 26, applicable contract provisions, and VTA procurement requirements.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, VTA will monitor and report DBE participation only for firms that are currently certified and eligible under applicable 49 CFR Part 26 requirements, including firms that have successfully completed any reevaluation requirements established pursuant to the IFR.

Such monitoring activities may include, but are not limited to, the following methods:

1. Posting prime contractor payment information into a contract compliance or development tracking system accessible to subcontractors in order to notify subcontractors of payment activity and applicable prompt payment timelines;
2. Utilizing automated systems requiring timely entry and reporting of payments made by prime contractors to subcontractors, including confirmation of payment receipt where applicable, and routinely monitoring such systems for compliance;
3. Conducting periodic reviews of prompt payment compliance, retainage release requirements, subcontractor utilization, commercially useful function (CUF) compliance, and other contract administration requirements described in the procurement and contract documents; and
4. Taking other affirmative contract administration and enforcement actions authorized under applicable federal regulations, contract provisions, and VTA procedures.

VTA requires prime contractors to maintain records and documentation of payments made to subcontractors, including DBE and non-DBE subcontractors, for a minimum of three (3) years following completion of the contract, or for such longer period as may be required under applicable federal or state record retention requirements associated with VTA's financial assistance agreements. Such records shall be made available upon request for inspection by authorized representatives of VTA, USDOT, FTA, or other authorized oversight agencies.

VTA may conduct periodic reviews or audits of subcontractor payment information to evaluate consistency between amounts reported by the prime contractor and actual payments made to subcontractors, including DBE subcontractors where applicable.

Monitoring Contracts and Work Sites

VTA reviews contracting records and conducts active monitoring of contract performance and work sites to ensure compliance with applicable requirements of 49 CFR Part 26, including commercially useful function (CUF), subcontractor utilization, prompt payment, and other DBE program requirements.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, VTA will monitor and recognize DBE participation only for firms that are currently certified and eligible under applicable federal requirements, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

VTA monitors work committed to DBE firms at contract award, or subsequently approved through contract modifications or substitutions, to verify that the work is being performed by the DBE firms identified in the contract documents and in accordance with applicable CUF requirements contained in 49 CFR §26.55.

Work site monitoring and contract compliance reviews may be performed by the DBE Liaison Officer (DBELO), Project Staff, Office of Business Development Programs staff, Labor Compliance staff, or other authorized VTA representatives.

VTA also reviews contracting records, subcontractor utilization reports, payment records, certified payroll information where applicable, and other contract documentation to evaluate compliance with DBE program requirements and contract commitments.

VTA will maintain written records documenting contract compliance reviews, work site monitoring activities, and any corrective actions or enforcement measures taken to address identified compliance issues.

VTA will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps provided in §26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, VTA will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Section 26.39 – Small Business Participation

VTA adopted a Small Business Enterprise (SBE) Program in the year 2000 to promote and facilitate participation by certified small business concerns in VTA contracting opportunities. The program is intended to encourage small business participation through race-neutral measures consistent with applicable federal and state requirements.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, VTA may utilize race-neutral small business measures to facilitate participation by small businesses on federally assisted contracts, including during periods in which DBE goal-setting activities are restricted or otherwise subject to federal authorization requirements.

The SBE Program is designed to structure contracting and procurement practices in a manner that facilitates competition by small business concerns, including taking reasonable steps to reduce unnecessary barriers to participation, avoiding unjustified bundling of contract requirements where practicable, and encouraging opportunities for small businesses to

participate as prime contractors and subcontractors.

VTA is currently reviewing and evaluating its SBE Program to obtain a current, data-driven understanding of SBE availability and utilization in relation to VTA's contracting opportunities. This review is intended to assist VTA in evaluating the effectiveness of its race-neutral small business measures and identifying opportunities to further enhance small business participation consistent with applicable federal and state requirements.

The Small Business Enterprise Program is incorporated as **Attachment 11** to this DBE Program. The program elements will continue to be actively implemented to foster and encourage small business participation in VTA contracting opportunities.

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 Development (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, PCBD 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. VTA does not set aside contracts for DBEs on DOT-assisted contracts.

Section 26.45 – Overall Goals

VTA will not establish, update, or implement overall DBE goals unless and until the California Unified Certification Program (CUCP) has completed the reevaluation of DBE firms in accordance with 49 CFR §26.111. Any goal-setting methodology will be based solely on firms that have been reevaluated and confirmed eligible under this provision.

Consistent with 49 CFR §26.45, VTA will establish an overall DBE goal covering a three-year Federal fiscal year period if it anticipates awarding DOT-assisted prime contracts with a cumulative value exceeding \$250,000 in DOT funds during any of the reporting fiscal years within the goal period. VTA will submit its Overall Three-Year DBE Goal to the Federal Transit Administration (FTA) by August 1 of the applicable year, provided that CUCP reevaluation has been completed and the data used to develop the goal reflects only DBE firms confirmed as eligible in accordance with 49 CFR §26.111.

The DBE goals will be established in accordance with the two-step process set forth in 49 CFR §26.45. Consistent with the October 3, 2025, Final Rule and 49 CFR §26.111, VTA will not establish, update, or implement DBE goals unless and until the California Unified Certification Program (CUCP) has completed the reevaluation of DBE firms and confirmed their eligibility. If VTA does not anticipate awarding DOT-assisted prime contracts with a cumulative value exceeding \$250,000 during any year within the applicable three-year period, an overall DBE goal will not be developed; however, this DBE Program will remain in effect, and VTA will continue to carry out the objectives of 49 CFR §26.1.

Step 1 – Base Figure Determination

VTA will determine a base figure representing the relative availability of DBEs in its market area using data sources that comply with 49 CFR §26.45(c), such as a bidders list that meets regulatory requirements, a disparity study, DBE directory information, Census Bureau data, or other approved methodologies. VTA will ensure that any data used reflects only DBE firms that have been reevaluated and confirmed eligible under 49 CFR §26.111. The exclusive use of pre-qualified lists, plan holders, or non-compliant bidders' lists will not be used.

Step 2 – Adjustment of Base Figure

VTA will assess whether an adjustment to the base figure is necessary to more accurately

reflect the level of DBE participation that would be expected absent discrimination. Adjustments may be based on past participation, disparity studies, and evidence of barriers to entry or competitiveness. Any such adjustments will rely solely on data from DBE firms that have been reevaluated and confirmed eligible in accordance with 49 CFR §26.111. If the available evidence does not support an adjustment, no adjustment will be made.

Any methodology selected will be supported by demonstrable evidence of local market conditions and will be designed to produce a goal that is rationally related to the relative availability of DBEs that have been confirmed eligible following reevaluation.

Consultation and Public Participation

In establishing the overall goal, VTA will conduct consultation with minority, women, and general contractor groups, community organizations, and other stakeholders. This consultation will include direct, interactive engagement (e.g., meetings, video conferences, or teleconferences) to gather input relevant to goal setting. The consultation process will occur prior to submission of the goal to the Federal Transit Administration (FTA), and the submission will document the consultation conducted.

VTA will also publish a notice of the proposed overall goal on its official website and may utilize additional outreach channels. If the proposed goal is revised following FTA review, the updated goal will be publicly posted. All participation and data used in the consultation and goal-setting process will be based on DBE firms confirmed eligible under 49 CFR §26.111.

The overall goal submission to FTA will include a summary of comments received and VTA's responses.

VTA will begin using the approved overall goal on October 1 of the applicable period, or as otherwise directed by FTA, provided that CUCP reevaluation has been completed and all data used complies with 49 CFR §26.111.

Design-Build Project Goals

If authorized or required by the Federal Transit Administration (FTA) or other applicable USDOT operating administration, VTA may establish an overall DBE goal on a project-specific basis for a particular grant, project, or group of grants and/or projects, including multi-year or design-build projects, consistent with 49 CFR Part 26 and applicable USDOT guidance.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, VTA will establish project-specific DBE goals only when authorized under applicable federal requirements and only for firms that are currently certified and eligible under 49 CFR Part 26, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

Any project-specific goal established by VTA shall be considered an overall DBE goal and will comply with all applicable substantive and procedural requirements governing overall goals under 49 CFR Part 26. A project goal may be adjusted to reflect changed circumstances, subject to concurrence or approval by the appropriate USDOT operating administration, where required.

A project-specific goal shall apply for the duration of the project and may include projected DBE participation anticipated during each fiscal year covered by the project goal. Funds associated with a project-specific goal may be excluded from the base used to calculate VTA's regular

overall DBE goal applicable to contracts not covered by the project goal, consistent with applicable federal requirements.

Where a project-specific DBE goal is established, VTA will implement the goal at the time of the first solicitation for a USDOT-assisted contract associated with the project, consistent with applicable federal authorization and regulatory requirements.

DBE performance plan requirement for design-build projects

For design-build procurements in which a DBE contract goal is authorized and established in accordance with applicable federal requirements, VTA may require proposers responding to a Request for Proposals (RFP) to submit a DBE Performance Plan (DPP) as part of their proposal submission.

The DBE Performance Plan is intended to identify the proposer's anticipated approach for facilitating DBE participation throughout the life of the project, including the types of work the proposer anticipates subcontracting, potential subcontracting opportunities, anticipated procurement or outreach activities, and projected timeframes for subcontracting activities, where applicable.

Consistent with the USDOT Interim Final Rule (IFR) effective October 3, 2025, any DBE participation identified in the DBE Performance Plan shall be limited to firms that are currently certified and eligible under applicable 49 CFR Part 26 requirements, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

VTA may monitor the design-build contractor's implementation of the DBE Performance Plan throughout the duration of the contract as part of its overall contract administration, commercially useful function (CUF), subcontractor utilization, and good faith efforts review processes, where applicable under federal regulations and contract requirements.

The DBE Performance Plan may be revised during the course of the project through written agreement between VTA and the design-build contractor to reflect changes in project scope, sequencing, subcontracting opportunities, procurement schedules, or other project-related circumstances.

Prior Operating Administration Concurrence

VTA understands that prior approval or concurrence by the Federal Transit Administration (FTA) is not required for submission of VTA's overall DBE goal. However, consistent with 49 CFR Part 26 and the USDOT Interim Final Rule (IFR) effective October 3, 2025, the FTA may review VTA's overall goal methodology, supporting data, race-neutral/race-conscious measures, and underlying assumptions for compliance with applicable federal requirements.

If FTA determines that the overall goal has not been appropriately calculated, is not adequately supported, or that the methodology utilized by VTA is inconsistent with applicable regulatory requirements or USDOT guidance, FTA may require VTA to revise or adjust the overall goal following consultation with VTA. Any revised or adjusted goal required by FTA shall be binding upon VTA.

In evaluating the adequacy and soundness of VTA's methodology, the FTA may consider applicable provisions of 49 CFR Part 26, USDOT guidance, available market data, evidence of DBE availability, race-neutral measures, and any additional guidance or best practices issued

pursuant to federal regulations.

Consistent with the IFR, VTA will establish and implement overall DBE goals only in accordance with applicable federal authorization requirements and only for firms that are currently certified and eligible under 49 CFR Part 26, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

A description of the methodology utilized to calculate the overall DBE goal, including supporting calculations and data sources, is contained in **Attachment 5** to this program.

Section 26.47 – Goal Setting and Accountability

VTA understands that it cannot be penalized or treated by the U.S. Department of Transportation (USDOT) as being in noncompliance with 49 CFR Part 26 solely because DBE participation does not achieve or exceed an established overall DBE goal, provided that VTA administers its DBE Program in good faith and in accordance with applicable federal requirements.

VTA further understands that compliance with 49 CFR Part 26 requires VTA to maintain and implement an approved DBE Program and, where authorized and applicable, an overall DBE goal established consistent with federal requirements and the USDOT Interim Final Rule (IFR) effective October 3, 2025.

Consistent with the IFR, VTA will establish, monitor, and report DBE participation only for firms that are currently certified and eligible under applicable 49 CFR Part 26 requirements, including firms that have successfully completed any required reevaluation process established pursuant to the IFR.

If the awards, commitments, or payments reflected in VTA's Uniform Report of DBE Awards or Commitments and Payments are less than the applicable overall DBE goal for a given fiscal year, VTA may undertake appropriate good faith administrative review and program evaluation measures, which may include the following:

1. Conducting an analysis of factors that may have contributed to the difference between the overall DBE goal and actual DBE participation results during the reporting period;
2. Evaluating whether additional race-neutral measures, outreach efforts, contract structuring practices, small business initiatives, or other program adjustments may be appropriate to further facilitate DBE and small business participation consistent with applicable federal requirements; and
3. Where required by applicable federal regulations or requested by FTA, submitting information, analyses, corrective action measures, or program updates to FTA or other authorized USDOT operating administrations for review.

VTA understands that any corrective actions, reporting obligations, or future goal-setting activities shall be implemented consistent with applicable federal authorization requirements, USDOT guidance, and the provisions of the October 3, 2025, IFR.

Section 26.49 – Transit Vehicle Manufacturers Goals

VTA will require Transit Vehicle Manufacturers (TVMs), as a condition of eligibility to bid or propose on FTA-assisted transit vehicle procurements, to comply with the applicable requirements of 49 CFR §26.49, consistent with the October 3, 2025, USDOT Interim Final Rule (IFR) and any related FTA guidance.

1. VTA affirms that only those Transit Vehicle Manufacturers listed on FTA's current certified Transit Vehicle Manufacturer (TVM) list at the time of solicitation, or those that have submitted a DBE goal methodology to FTA that has been approved or not disapproved by FTA, shall be eligible to bid or propose on FTA-assisted transit vehicle procurements.
2. VTA understands that compliance oversight and enforcement relating to Transit Vehicle Manufacturer DBE Program requirements under 49 CFR §26.49 remain the responsibility of FTA. Any determination regarding a TVM's noncompliance, including potential removal from FTA's certified TVM list, shall be made by FTA in accordance with applicable federal regulations and procedures.
3. VTA acknowledges that failure by a Transit Vehicle Manufacturer to comply with applicable requirements under 49 CFR Part 26, including §26.49, may result in enforcement action or sanctions by FTA, including but not limited to removal from FTA's certified TVM list or FTA declining participation in the associated vehicle procurement.
4. VTA will submit to FTA, within 30 days following contract award, the name of the successful Transit Vehicle Manufacturer and the total dollar value of the contract, in the manner prescribed by FTA and the applicable grant agreement requirements.

Section 26.51 – Breakout of Estimated Race-Neutral & Race Conscious

VTA will seek to meet the maximum feasible portion of its overall DBE participation objectives through the use of race-neutral measures designed to facilitate small business participation consistent with the requirements of 49 CFR Part 26, as amended by the October 3, 2025, USDOT Interim Final Rule (IFR).

For purposes of this Program, race-neutral DBE participation includes DBE participation obtained through customary competitive procurement procedures, including instances where a certified DBE firm wins a prime contract or is awarded a subcontract on a contract that does not include a DBE contract goal.

Consistent with the October 3, 2025, USDOT IFR, VTA will implement race-neutral small business and contracting measures in a manner that does not require the use of race-conscious contract goals unless and until authorized under applicable federal requirements.

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

1. Arranging solicitations, bid submission schedules, contract quantities, specifications, and delivery requirements in a manner designed to facilitate participation by small businesses, including certified DBE firms eligible under applicable federal requirements, and making contracting opportunities more accessible to small businesses through measures consistent with 49 CFR §26.39.
2. Providing assistance to small businesses, including certified DBEs, in overcoming barriers related to bonding, financing, and insurance, including measures such as simplifying bonding processes, reducing excessive bonding requirements where legally permissible, providing information regarding bonding and financing resources, and facilitating access to technical resources.
3. Providing technical assistance, training, and other business development services designed to enhance the capacity of small businesses and certified DBEs to compete for and perform on VTA contracts.
4. Conducting outreach, information, and communications programs regarding contracting procedures and procurement opportunities, including ensuring broad

dissemination of contracting opportunities to small businesses and certified DBEs through mailing lists, electronic notifications, outreach events, and provision of information in languages other than English where appropriate.

5. Implementing supportive services and business development initiatives intended to improve immediate and long-term business management, recordkeeping, financial, estimating, and accounting capabilities of small businesses and certified DBEs.
6. Providing services and resources intended to assist small businesses and certified DBEs in strengthening long-term business development, increasing capacity to compete for a broader range of work opportunities, performing larger and more complex projects, and enhancing overall business sustainability.
7. Establishing programs and outreach efforts intended to assist new and emerging small businesses, including firms in industries or work categories where participation has historically been limited.
8. Ensuring broad distribution and accessibility of the California Unified Certification Program (CUCP) DBE directory and other applicable small business resource directories through electronic and other feasible means to contractors, consultants, and procurement stakeholders.

Assisting small businesses and certified DBEs in developing the capability to utilize emerging technologies, electronic procurement systems, and digital business tools necessary to compete effectively in modern contracting environments.

Contract Goals

Consistent with 49 CFR §26.51 and the October 3, 2025, USDOT Interim Final Rule (IFR), if VTA's approved projection determines that the applicable overall participation objective can be achieved through race-neutral measures, VTA will not establish contract-specific DBE goals unless and until the use of contract goals is authorized and determined to be necessary under applicable federal requirements.

To the extent permitted under applicable federal law, regulation, and USDOT/FTA guidance, VTA may establish contract goals only on DOT-assisted contracts that contain identifiable subcontracting opportunities. Contract goals will not be required on every DOT-assisted contract and, where authorized, will be tailored to the specific circumstances of each contract, including factors such as the type of work, location of work, availability of certified DBE firms eligible under applicable federal requirements, subcontracting opportunities, and other relevant market conditions.

Any contract goals established by VTA shall be expressed as a percentage of the total dollar value of the DOT-assisted contract.

Section 26.53 – Good Faith Efforts Procedures

For purposes of DBE participation eligibility, contract goal attainment, and evaluation of Good Faith Efforts, only DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the applicable time of award or participation will be recognized and counted toward DBE requirements.

Demonstration of Good Faith Efforts (Pre-Award)

For contracts that include an established DBE participation goal, award will be made only to a

bidder or offeror that either: (1) meets the stated DBE contract goal through participation by DBE firms determined eligible pursuant to 49 CFR §26.111; or (2) demonstrates adequate Good Faith Efforts (GFE) in accordance with 49 CFR §26.53 and Appendix A to Part 26.

Only participation by DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the time of bid/proposal submission may be counted toward DBE contract goals or considered in evaluating Good Faith Efforts.

Bidders/offerors shall submit complete, accurate, and timely documentation demonstrating compliance with applicable DBE requirements. All DBE commitment documentation submitted in support of a DBE goal or GFE submission must identify DBE firms confirmed eligible under 49 CFR §26.111.

An Ad Hoc Good Faith Effort Review Committee, comprised of representatives from the Office of Business and Diversity Programs (OBDP), Engineering and Construction, and/or Procurement, will evaluate whether the bidder/offeror has satisfied the DBE contract goal requirements or demonstrated adequate Good Faith Efforts. All determinations will be made in accordance with applicable federal regulations and will be based solely on participation by DBE firms eligible under 49 CFR §26.111.

Required Submission Documentation

For all solicitations that include an established DBE contract goal, bidders/offerors shall submit the following information in support of their DBE commitment or Good Faith Efforts submission:

- Names and addresses of DBE firms proposed to participate, limited to DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the time of bid/proposal submission;
- A description of the work to be performed by each listed DBE firm, consistent with the firm's approved NAICS codes and certification eligibility;
- The dollar amount and percentage value of each DBE firm's proposed participation;
- Written commitment documentation demonstrating the bidder's/offeror's intent to utilize the identified DBE firms;
- Written confirmation from each listed DBE firm acknowledging its participation in the contract; and
- If the DBE contract goal is not met, documentation demonstrating Good Faith Efforts in accordance with 49 CFR §26.53 and Appendix A to Part 26, including evidence of DBE solicitations, follow-up efforts, and consideration of DBE quotes.

For Design-Build procurements with an established DBE contract goal, proposers shall also submit a DBE Work Plan describing the methodology and approach the proposer intends to utilize to achieve the DBE participation goal through the use of DBE firms eligible under 49 CFR §26.111.

Unless otherwise authorized by applicable federal regulations or solicitation instructions, all required DBE commitment and/or Good Faith Efforts documentation shall be submitted:

- With the bid, for procurements utilizing sealed bid procedures. or
- With the initial proposal, for procurements utilizing negotiated procurement procedures.

Administrative Reconsideration

A bidder/offeror determined to be non-responsive for failure to satisfy applicable DBE requirements may request administrative reconsideration within three (3) business days of receipt of the determination. The reconsideration process shall be conducted in accordance with 49 CFR §26.53(d). Any reconsideration determination regarding DBE goal attainment or Good Faith Efforts will be based solely on participation by DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the applicable time of bid/proposal submission.

Requests for reconsideration shall be submitted in writing to the following reconsideration official:

Remi Awosanya

Contracts Compliance Manager/DBELO
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

Post-Award Requirements and DBE Substitutions

The contractor shall utilize the DBE firms identified in its bid or proposal and approved by VTA, unless prior written consent for termination, substitution, or reduction in scope is obtained from VTA in accordance with 49 CFR §26.53(f).

Prime contractors shall not terminate, substitute, or otherwise remove a listed DBE firm without prior written approval from VTA. Such approval will be granted only for good cause consistent with 49 CFR §26.53(f)(3), including, but not limited to, failure or refusal to execute a written contract, failure to perform the work in a commercially reasonable manner, insolvency, voluntary withdrawal, or loss of eligibility/certification status.

Consistent with 49 CFR §26.111, participation by a DBE firm that is determined ineligible following reevaluation shall not be counted toward DBE participation requirements after the effective date of such ineligibility determination. In such circumstances, the contractor shall make Good Faith Efforts to replace the firm with another DBE firm that has successfully completed the reevaluation process and remains certified and eligible under 49 CFR §26.111.

Good Faith Efforts for Replacement

If a DBE subcontractor is terminated, removed, becomes ineligible, or fails to complete its committed work, the contractor shall make Good Faith Efforts, in accordance with 49 CFR §26.53(f), to replace the DBE firm with another DBE firm that has successfully completed the reevaluation process and remains certified and eligible under 49 CFR §26.111. The contractor shall document such Good Faith Efforts and provide supporting documentation to VTA upon request.

Enforcement

If the contractor fails to comply with applicable DBE requirements, including failure to fulfill committed DBE participation obligations, failure to make adequate Good Faith Efforts where

required, or failure to comply with 49 CFR Part 26 and related contract provisions, VTA may take appropriate enforcement actions consistent with applicable federal regulations and the terms of the contract. Such actions may include, but are not limited to, withholding of progress payments, suspension of work, assessment of contractual remedies, or termination for default.

To the extent applicable, DBE participation credited toward contract requirements shall be limited to participation by DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111.

Administrative Reconsideration

Within three (3) business days of receipt of notice from VTA that a bid or proposal has been determined non-responsive for failure to meet the applicable DBE contract goal or to document adequate Good Faith Efforts (GFE), the bidder/offeror may request administrative reconsideration in accordance with 49 CFR §26.53(d).

Requests for reconsideration shall be submitted in writing to the following reconsideration official:

Remi Awosanya

Contracts Compliance Manager/DBELO
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

As part of the reconsideration process, the bidder/offeror shall have the opportunity to submit written documentation and arguments concerning whether it met the applicable DBE contract goal or made adequate Good Faith Efforts in accordance with 49 CFR §26.53 and Appendix A to Part 26. The bidder/offeror shall also have the opportunity to meet in person with the reconsideration official to discuss the issue.

The reconsideration determination shall be made in accordance with applicable federal regulations and shall be based solely on participation by DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the applicable time of bid/proposal submission.

VTA will issue a written decision explaining the basis for the determination regarding whether the bidder/offeror met the DBE contract goal or demonstrated adequate Good Faith Efforts. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

For Design-Build, Progressive Design-Build, Construction Manager/General Contractor (CM/GC), task order, or other phased contracting arrangements in which VTA awards a master or prime contract under which subsequent subcontracting opportunities are identified or awarded, VTA may establish contract-specific or phase-specific DBE participation goals, where authorized and consistent with applicable federal requirements. VTA shall maintain oversight of the prime contractor's DBE compliance activities to ensure continued compliance with 49 CFR Part 26, including requirements related to DBE eligibility under 49 CFR §26.111.

Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor shall make available to VTA, upon request, copies of all DBE subcontracts and related agreements. The contractor shall ensure that all subcontracts and lower-tier agreements involving DBE firms include all applicable provisions required under 49 CFR Part 26 and require compliance with all applicable federal DBE requirements.

Prime contractors shall not terminate, substitute, reduce the scope of work, or otherwise remove a DBE firm identified in response to a solicitation with an established DBE contract goal, or an approved replacement DBE firm, without prior written consent from VTA in accordance with 49 CFR §26.53(f). This prohibition includes, but is not limited to, situations in which the prime contractor seeks to self-perform work originally committed to a DBE firm or transfer such work to another DBE or non-DBE firm.

VTA will grant written consent to terminate or substitute a DBE firm only upon a determination that good cause exists consistent with 49 CFR §26.53(f)(3). Good cause may include, but is not limited to, the following circumstances:

1. The DBE firm fails or refuses to execute a written subcontract;
2. The DBE firm fails or refuses to perform the work in a manner consistent with normal industry standards, provided such failure is not the result of bad faith or discriminatory conduct by the prime contractor;
3. The DBE firm fails or refuses to meet reasonable, nondiscriminatory bonding requirements;
4. The DBE firm becomes bankrupt, insolvent, or otherwise financially incapable of performing the work;
5. The DBE firm becomes ineligible to perform public work due to suspension, debarment, or other legal restrictions;
6. VTA determines that the DBE firm is not a responsible contractor;
7. The DBE firm voluntarily withdraws from the project and provides written notice of withdrawal;
8. The DBE firm is determined ineligible to receive DBE participation credit for the type of work involved, including loss of eligibility following reevaluation under 49 CFR §26.111;
9. The DBE owner dies or becomes disabled, rendering the firm unable to complete the work; or
10. Other documented circumstances that VTA determines constitute good cause under applicable federal regulations.

Prior to submitting a request to terminate or substitute a DBE firm, the prime contractor shall provide written notice to the DBE firm, with a copy to VTA, stating the reasons for the proposed action. The DBE firm shall be provided five (5) calendar days to respond and advise both the prime contractor and VTA of any objections to the proposed termination or substitution. Where necessary for public safety or project necessity, VTA may authorize a shorter response period consistent with 49 CFR §26.53(f).

These requirements apply to both post-award substitutions and pre-award deletions or substitutions of DBE firms proposed in negotiated procurements.

Each prime contract shall include a provision stating:

The contractor shall utilize the specific DBE firms identified in its bid or proposal to perform the

work and supply the materials for which each firm was committed, unless prior written consent is obtained from VTA in accordance with 49 CFR §26.53(f). Participation credited toward DBE contract goals shall be limited to DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 at the applicable time participation is counted.

If a DBE firm is terminated, becomes ineligible, or otherwise fails to complete its committed work, the contractor shall make Good Faith Efforts in accordance with 49 CFR §26.53(f) to replace the DBE firm with another DBE firm that has successfully completed the reevaluation process and remains certified and eligible under 49 CFR §26.111. Such Good Faith Efforts shall be directed toward obtaining replacement participation sufficient to satisfy the applicable DBE contract goal, to the extent feasible. The contractor shall document all Good Faith Efforts and provide such documentation to VTA upon request. VTA will issue a written determination regarding whether adequate Good Faith Efforts have been demonstrated.

If the contractor fails or refuses to comply with applicable DBE requirements, including failure to make required Good Faith Efforts or comply with approved DBE commitments, VTA may take enforcement actions consistent with the contract documents and 49 CFR Part 26. Such actions may include withholding of progress payments, suspension of work, or termination for default, where applicable.

Section 26.55 – Counting DBE Participation

DBE participation shall be counted toward overall and contract-specific DBE participation goals only for DBE firms that have successfully completed the reevaluation process and remain certified and eligible under 49 CFR §26.111 through the California Unified Certification Program (CUCP), except as otherwise permitted under applicable federal regulations.

Participation by firms that have not completed reevaluation and been confirmed eligible under 49 CFR §26.111 shall not be counted toward DBE goals, credited for compliance purposes, or reported as DBE participation, except as permitted under 49 CFR §26.87(j) or other applicable federal guidance.

VTA shall verify DBE eligibility status through the CUCP prior to:

- Counting DBE participation toward contract or overall goals;
- Reporting DBE attainment to the United States Department of Transportation (USDOT) or other oversight agencies; and
- Approving DBE participation credit on federally assisted contracts.

Consistent with 49 CFR §26.55, DBE participation credit shall be counted only after the DBE firm has been paid for work actually performed in accordance with the contract and applicable federal requirements. No DBE participation credit shall be applied until payment has been made to the eligible DBE firm.

In the case of post-award substitutions, additions, or replacements, participation by a firm that is not certified and confirmed eligible under 49 CFR §26.111 at the applicable time participation is credited shall not be counted toward DBE participation goals, except as otherwise permitted under 49 CFR §26.87(j).

The Office of Business Development Programs (OBDP) shall be responsible for verifying DBE eligibility status and determining whether DBE participation may be counted toward applicable

goals. All determinations shall be made in accordance with 49 CFR Part 26 and applicable federal guidance, and contractors shall comply with OBDP determinations regarding DBE eligibility and participation credit.

Commercially Useful Function 26.55(c)

VTA shall count payments toward DBE participation goals only for work performed by an eligible DBE firm performing a Commercially Useful Function (CUF) in accordance with 49 CFR §26.55(c).

An eligible DBE firm performs a Commercially Useful Function when it is responsible for the execution of the work of the contract or a distinct element of the work by actually performing, managing, and supervising the work involved. With respect to materials and supplies, the DBE must also be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material where applicable, and paying for the material itself.

In determining whether a DBE firm is performing a Commercially Useful Function, VTA may evaluate:

- The amount of work subcontracted;
- Industry practices;
- Whether the amount paid to the DBE is commensurate with the work actually performed;
- The DBE participation credit claimed; and
- Other relevant factors consistent with 49 CFR §26.55.

A DBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed solely to create the appearance of DBE participation. VTA may examine similar transactions and industry practices in determining whether the DBE's role is superfluous or commercially unnecessary.

If a DBE firm does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its subcontract with its own workforce, or subcontracts a greater portion of the work than would be expected under normal industry practice, VTA may presume that the DBE is not performing a Commercially Useful Function, consistent with 49 CFR §26.55(c).

If VTA determines that a DBE firm is not performing a Commercially Useful Function, the DBE firm may present evidence to rebut the determination. Determinations related to Commercially Useful Function are subject to review by the applicable USDOT Operating Administration.

Repeated failure by a DBE firm to perform a Commercially Useful Function may raise questions regarding the firm's independence, control, or continued eligibility under 49 CFR Part 26. Where appropriate, VTA may refer the matter to the CUCP and may initiate or request proceedings pursuant to 49 CFR §26.87 regarding continued DBE eligibility.

In cases involving suspected fraud, intentional misrepresentation, or deliberate attempts to circumvent DBE program requirements, VTA may refer the matter to the USDOT Office of Inspector General or other appropriate enforcement agencies.

DBE Regular Dealer System 26.55(e)(2)

VTA shall maintain procedures to evaluate whether a DBE regular dealer satisfies the requirements of 49 CFR §26.55(e). Such procedures may include questionnaires, review of

inventory records, verification of ownership or lease of distribution equipment, supplier capability reviews, and other compliance verification measures necessary to determine whether the DBE qualifies for DBE participation credit as a regular dealer.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 – Certification Process

VTA, as a certifying member of the California Unified Certification Program (CUCP), will apply the certification eligibility standards and procedures set forth in Subpart D of 49 CFR Part 26, as amended by the U.S. Department of Transportation's October 3, 2025 Interim Final Rule (IFR), in determining whether a firm is eligible for certification as a Disadvantaged Business Enterprise (DBE) for participation in DOT-assisted contracts.

To be certified as a DBE, a firm must meet all applicable eligibility requirements of 49 CFR Part 26. Certification determinations will be based on the totality of the evidence and the record as a whole, consistent with applicable federal regulations and CUCP procedures.

All DBE certification, certification review, reevaluation, decertification, and related eligibility determinations are administered through the CUCP in accordance with 49 CFR Part 26 and applicable USDOT guidance.

For information regarding the DBE certification process, reevaluation requirements, or to apply for DBE certification, firms should contact:

Office of Business Development Program
3331 North First Street, Building B, San Jose, CA 95134-1906
Phone: 408-321-5988 / Email: obdp@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 certifying member of the California Unified Certification Program (CUCP), which is administered in accordance with 49 CFR Part 26, as amended by the U.S. Department of Transportation's October 3, 2025, Interim Final Rule (IFR). The CUCP is responsible for implementing a unified DBE certification program among participating member agencies, including certification, reevaluation, decertification, and directory management activities consistent with applicable federal requirements and USDOT guidance.

The CUCP operates in accordance with the requirements of 49 CFR §26.81 and related provisions of Part 26. A copy of the CUCP Agreement is included in Attachment 9 of this Program.

Section 26.83 – Procedures for Certification Decisions

Only firms certified as eligible DBEs in accordance with 49 CFR Part 26, Subpart D, as amended by the U.S. Department of Transportation's October 3, 2025, Interim Final Rule (IFR), may participate as DBEs in VTA's DBE Program. VTA, through its participation in the California Unified Certification Program (CUCP), will apply the certification procedures and eligibility

standards set forth in 49 CFR §26.83 and related provisions of Part 26 when determining whether a firm is eligible for DBE certification.

Certification determinations will be based on the entirety of the administrative record and all relevant facts as a whole. The CUCP will conduct certification reviews, evaluations, onsite visits, and other eligibility assessments consistent with applicable federal regulations and USDOT guidance.

Once a firm has been certified as a DBE, its certification shall remain in effect unless and until the firm's certification is removed, suspended, or otherwise modified through the procedures set forth in 49 CFR §§26.87, 26.88, or other applicable provisions of Part 26.

DBE firms are not required to reapply for certification or undergo periodic recertification. However, the CUCP may conduct certification reviews, reevaluations, onsite reviews, or requests for updated information when warranted by changed circumstances, complaints, audit findings, reevaluation requirements, or other information related to the firm's continuing eligibility under Part 26. Such reviews may include announced or unannounced onsite visits to the firm's offices, facilities, or project locations, consistent with federal requirements.

Notices of Change and Continuing Eligibility Requirements

Certified DBE firms are required to timely notify the CUCP, in writing, of any material changes affecting the firm's eligibility, including but not limited to changes related to ownership, control, management, disadvantaged status, business size, or any other material information relevant to eligibility under 49 CFR Part 26.

"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 \$32.82 million."

In accordance with the October 3, 2025, IFR and applicable USDOT guidance, the CUCP may require DBE firms to submit affidavits, declarations, updated eligibility documentation, tax records, financial information, or other supporting materials necessary to evaluate continuing eligibility and compliance with Part 26 requirements.

The CUCP may also conduct reevaluations of certified DBE firms pursuant to 49 CFR §26.111 and other applicable provisions of Part 26, including requests for updated documentation demonstrating continued eligibility under the revised certification standards established by the IFR.

Failure to timely provide requested information, cooperate with reevaluation requests, or demonstrate continued eligibility under Part 26 may result in administrative action, including suspension, removal from the DBE directory, proposed decertification, or other actions authorized under applicable federal regulation.

Section 26.85 – Interstate Certification

When a firm certified as a DBE by its home state Unified Certification Program (UCP) seeks DBE certification recognition or participation eligibility within the California Unified Certification Program (CUCP), the CUCP will process and evaluate the application in accordance with 49 CFR §26.85 and other applicable provisions of Part 26, as amended by the U.S. Department of Transportation’s October 3, 2025 Interim Final Rule (IFR).

VTA follows the policies, procedures, and interstate certification requirements established by the CUCP regarding interstate DBE certification applications, including any review, reevaluation, eligibility verification, or supporting documentation requirements necessary to determine continued eligibility under Part 26.

Section 26.86 – Denials of Initial Requests for Certification

If a certified DBE firm is decertified, removed from eligibility, or otherwise determined to be ineligible under 49 CFR Part 26, or if an applicant firm’s initial application for DBE certification is denied, the firm may not reapply for DBE certification for a period of twelve (12) months from the date of the final certification determination, unless otherwise permitted under applicable USDOT regulations or guidance.

The reapplication waiting period shall commence on the date the firm receives the written notice and explanation of the certification determination issued pursuant to 49 CFR §26.86 or other applicable provisions of Part 26. Any appeal to the U.S. Department of Transportation pursuant to 49 CFR §26.89 does not toll, extend, or otherwise modify the applicable waiting period for reapplication unless directed otherwise by USDOT.

Section 26.87 – Removal of a DBE’s Eligibility

In the event VTA, through the California Unified Certification Program (CUCP), proposes to remove, suspend, or otherwise alter a firm’s DBE eligibility or certification status, the procedures followed shall be consistent with 49 CFR §26.87, §26.88, and other applicable provisions of Part 26, as amended by the U.S. Department of Transportation’s October 3, 2025, Interim Final Rule (IFR). Attachment 10, Procedures for Removal of DBE Eligibility and Certification Appeals, sets forth these procedures in greater detail.

To ensure an appropriate separation of functions and impartial decision-making in certification removal proceedings, the CUCP Reconsideration Official, as identified in the CUCP Agreement contained in Attachment 9, shall serve as the independent decision-maker for such proceedings. The Reconsideration Official shall not have participated in, supervised, or directed the investigation, recommendation, initiation, or prosecution of the proposed certification removal action and shall remain independent from personnel involved in those activities.

Counting Participation After Decertification or Loss of Eligibility

1. The treatment of DBE participation following a firm’s decertification, removal from the DBE directory, suspension, or other loss of eligibility shall be governed by applicable provisions of 49 CFR Part 26 and current USDOT guidance, including the October 3, 2025, IFR.
2. Where a DBE firm loses eligibility after execution of a subcontract, VTA will determine whether and to what extent participation credit may continue to be counted toward

contract goals or overall program accomplishments in accordance with applicable federal regulations and guidance in effect at the time of the determination.

Prime contractors shall not terminate, replace, or materially modify the work of a listed or committed DBE firm without complying with applicable contract requirements and any approval procedures required under 49 CFR Part 26 and VTA contract provisions.

If a DBE firm becomes ineligible due solely to exceeding applicable business size standards or other eligibility thresholds during contract performance, VTA may continue to count eligible participation performed pursuant to existing contractual commitments to the extent permitted under applicable USDOT regulations and guidance.

If a DBE firm loses eligibility as a result of ownership changes, merger, acquisition, transfer of control, or other circumstances affecting disadvantaged ownership or control, VTA will evaluate continued participation credit and any required good faith efforts or replacement obligations in accordance with applicable federal requirements.

Section 26.88 – Summary Suspension of Certification

VTA, through the California Unified Certification Program (CUCP), will follow procedures consistent with 49 CFR §26.88 and other applicable provisions of Part 26, as amended by the U.S. Department of Transportation's October 3, 2025, Interim Final Rule (IFR), regarding the summary suspension of a DBE firm's certification or eligibility status.

A DBE firm's certification or eligibility status may be immediately suspended, consistent with applicable federal regulations and USDOT guidance, when there is adequate evidence indicating that the firm may no longer satisfy the eligibility requirements of 49 CFR Part 26. Circumstances that may warrant summary suspension include, but are not limited to:

- The death, incarceration, incapacity, withdrawal, or loss of involvement of an owner whose ownership or control is necessary to the firm's eligibility;
- Evidence of a material change in circumstances affecting ownership, control, disadvantaged status, independence, or business size;
- Failure to timely notify the CUCP of material changes affecting eligibility as required under Part 26;
- Failure to timely provide requested reevaluation materials, affidavits, declarations, tax records, or other information required to determine continuing eligibility; or
- Other circumstances authorized under applicable federal regulations or USDOT guidance.

When a firm is summarily suspended, the CUCP will provide written notice to the firm in accordance with applicable federal requirements. The notice will identify the basis for the suspension, the effective date of the suspension, and the procedures available to the firm to respond, provide additional information, voluntarily withdraw, or participate in any subsequent certification review or removal proceedings.

Summary suspension constitutes a temporary status pending further review, reevaluation, certification proceedings, or removal proceedings conducted pursuant to 49 CFR §26.87, §26.88, §26.111, and other applicable provisions of Part 26.

During the period of suspension, the firm shall not be considered eligible for purposes of obtaining DBE participation credit on new DOT-assisted contracts, unless otherwise permitted

under applicable federal regulations or USDOT guidance. Participation performed under existing contracts executed prior to the effective date of suspension may continue to be counted only to the extent permitted under 49 CFR Part 26 and applicable USDOT guidance, including requirements related to commercially useful function (CUF).

A suspended firm may submit information or documentation demonstrating continued eligibility or compliance with applicable requirements. Following review of the submitted information, the CUCP may lift the suspension, continue the suspension pending further review, initiate removal proceedings, or take other action authorized under Part 26.

Any appeal rights, review procedures, or administrative remedies associated with suspension, removal, constructive decertification, or certification determinations shall be governed by 49 CFR Part 26 and applicable USDOT guidance in effect at the time of the action.

Section 26.89 – Certification Appeals

Any firm, applicant, certified DBE, complainant, or other interested party authorized under 49 CFR Part 26 may appeal a certification-related decision of VTA or the California Unified Certification Program (CUCP) to the U.S. Department of Transportation (USDOT) in accordance with 49 CFR §26.89 and other applicable provisions of Part 26, as amended by the October 3, 2025 Interim Final Rule (IFR).

Appealable actions may include, but are not limited to, certification denials, decertifications, removals, suspensions, interstate certification determinations, constructive decertifications, or other certification eligibility determinations authorized under Part 26.

An appeal must be submitted to USDOT within the timeframe established under 49 CFR §26.89 and applicable USDOT guidance. The appeal should include a written statement identifying the basis for the appeal and any information the appellant believes demonstrates that the certification determination was inconsistent with applicable federal regulations, unsupported by substantial evidence, procedurally deficient, or otherwise inconsistent with Part 26.

USDOT retains discretion to accept untimely appeals for good cause, in the interest of justice, or as otherwise permitted under applicable federal regulations or guidance.

VTA and the CUCP will cooperate with USDOT in connection with any appeal proceedings and will provide records or documentation requested by USDOT consistent with applicable federal requirements.

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**

USDOT will review certification appeals in accordance with 49 CFR §26.89 and other applicable provisions of Part 26, as amended by the October 3, 2025, Interim Final Rule (IFR). USDOT's review will generally be based upon the administrative record developed by the certifying agency or Unified Certification Program (UCP), together with any additional information or materials permitted under applicable federal regulations or USDOT procedures.

USDOT may supplement the administrative record with relevant information obtained from the DOT Office of Inspector General, federal, state, or local law enforcement agencies, DOT operating administrations, recipients, UCPs, firms, complainants, or other appropriate sources, consistent with applicable federal requirements and administrative review procedures.

The California Unified Certification Program (CUCP) and VTA will promptly implement and comply with any USDOT certification appeal determinations or directives affecting DBE eligibility, certification status, suspension, removal, reinstatement, or participation in DOT-assisted contracting activities, consistent with applicable federal regulations and USDOT guidance.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 – Compliance Procedures Applicable to VTA

VTA understands that failure to comply with the applicable requirements of 49 CFR Part 26, as amended, may result in enforcement actions or program sanctions by the U.S. Department of Transportation (USDOT) or the applicable operating administration, consistent with federal law and regulation. Such actions may include the suspension or termination of Federal financial assistance, withholding of approvals, or other remedies authorized by applicable statutes, regulations, grant agreements, or program requirements until identified compliance deficiencies are adequately addressed.

VTA further understands that compliance determinations will be based on VTA's administration and implementation of its DBE Program in accordance with the requirements of 49 CFR Part 26, including compliance with the October 3, 2025, Interim Final Rule (IFR), applicable USDOT guidance, and any subsequent regulatory updates or directives issued by USDOT or the applicable operating administration.

Program sanctions or enforcement actions, where applicable, may include actions authorized under 23 CFR 1.36 for FHWA-funded programs, applicable FAA statutory and regulatory authorities, and FTA authorities under 49 U.S.C. Chapter 53 and related 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 applicable Federal, state, and local laws, including the California Public Records Act (Government Code §6250 et seq.) and applicable provisions of 49 CFR Part 26, as amended by the October 3, 2025, USDOT Interim Final Rule (IFR).

VTA recognizes that the California Public Records Act establishes the public's right to access governmental records, subject to exemptions and protections provided by law. Records exempt from disclosure include records protected from disclosure under Federal or state law, including confidential business information, privileged materials, and other protected records pursuant to Government Code §7927.700 (formerly §6254(k)) and related provisions.

Consistent with 49 CFR Part 26, VTA will not release an individual's Personal Net Worth (PNW) statement or supporting documentation to any third party, other than the California

Unified Certification Program (CUCP), USDOT, or as otherwise authorized by Federal law or regulation, without the written consent of the submitter. Such information shall be treated as confidential and protected from public disclosure to the fullest extent permitted by law.

Information submitted in connection with DBE certification, eligibility, reevaluation, compliance monitoring, or other Part 26 requirements that may reasonably be construed as confidential business information will not be disclosed except as authorized or required by applicable law, regulation, court order, or USDOT oversight responsibilities. VTA may transmit such information to USDOT, the CUCP, or other governmental entities authorized to receive such information for certification, oversight, enforcement, appeal, compliance review, or other lawful Part 26 administrative purposes.

All participants in VTA's DBE Program, including recipients, contractors, subcontractors, DBE firms, applicants, complainants, and appellants, are required to cooperate fully and promptly with USDOT, the applicable operating administration, the CUCP, and VTA in connection with certification reviews, reevaluations, compliance reviews, investigations, audits, monitoring activities, appeals, and requests for information conducted pursuant to 49 CFR Part 26. Failure to cooperate may result in appropriate administrative or contractual action authorized by applicable law or regulation, including denial or removal of certification eligibility, contract remedies, findings of non-responsibility, suspension, debarment, dismissal of complaints or appeals, or other authorized enforcement actions.

VTA, its contractors, subcontractors, consultants, and all other participants in the DBE Program shall not intimidate, threaten, coerce, retaliate against, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured under 49 CFR Part 26, or because the individual or firm has filed a complaint, provided information, testified, assisted, or participated in any manner in a Part 26 investigation, proceeding, hearing, certification review, reevaluation, or compliance activity.

VTA understands that violation of the prohibitions against intimidation, coercion, retaliation, or discrimination may constitute noncompliance with 49 CFR Part 26 and may subject the responsible party to appropriate enforcement or remedial action authorized under applicable Federal law, regulation, grant requirements, or contractual provisions.

LIST OF ATTACHMENTS

Attachment 1	Link to Regulations: 49 CFR Part 26
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	Link to DBE Directory
Attachment 5	Overall Goal Calculations
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1 through 5
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application
Attachment 9	California's UCP Agreement
Attachment 10	Procedures for Removal of DBE's Eligibility & Certification Appeals
Attachment 11	Small Business Element Program
Attachment 12	Santa Clara Valley Transportation Authority (VTA) DBE Shortfall Analysis Written Process
Attachment 13	Santa Clara Valley Transportation Authority Hearing Procedures

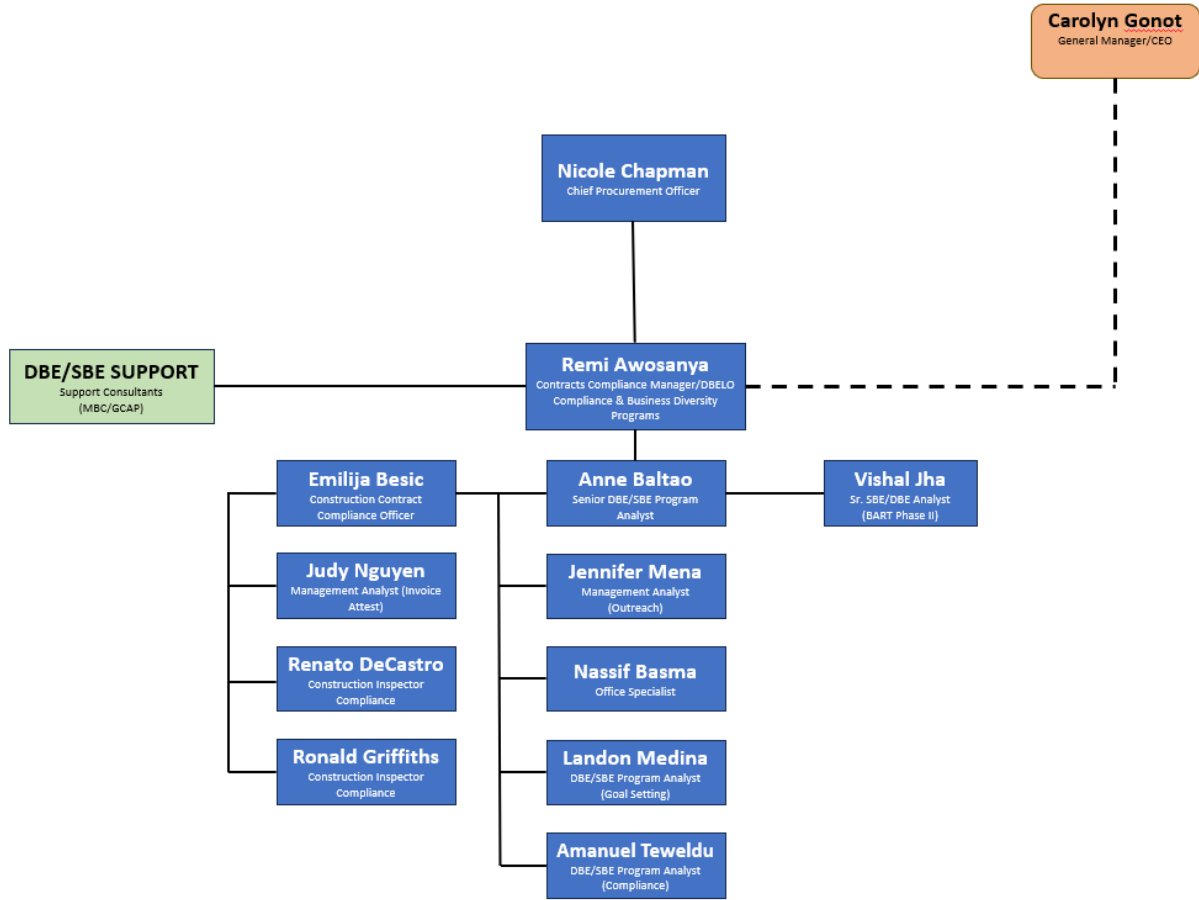
ATTACHMENT 1

Link to Regulations: 49 CFR Part 26

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

SAMPLE BIDDER'S LIST COLLECTION FORM 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 #: _____

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: _____

C. ENTER DETAILS REGARDING CONTRACTOR/SUBCONTRACTOR LISTED ABOVE

Check One:	<input type="checkbox"/> DBE _____ CUCP ID # <input type="checkbox"/> SBE <input type="checkbox"/> Non-SBE/Non-DBE
Age of Firm:	<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
Annual Gross Receipts (indicate bracket of income)	<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
Gender of Majority Owner	<input type="checkbox"/> Male <input type="checkbox"/> Female
North American Industry Classification System Code for Each Scope of Work	

D. FORM COMPLETED BY:

Form Completed by (*print name and sign*): _____

Date Signed: _____ Email address: _____

SUPPLEMENTAL SUBCONTRACTOR INFORMATION

In accordance with Title 49, Section 26 of the Code of Federal Regulations, the Proposer shall list all subcontractors, regardless of whether they were selected or not. This includes both successful and unsuccessful subcontractors.

Photocopy this form for additional firms.

Solicitation Number: _____

Subcontractor Name & Address	Work Description	Subcontract Amount	Percentage of Bid Item Subcontracted	NAICS Codes	DBE/SBE (if applicable)	DBE/SBE Cert Number (if applicable)	Annual Gross Receipts	
							<\$1million	<\$5million
NAME							<\$1million	<\$5million
							<\$10million	<\$15million
City, State, ZIP code							Age of Firm in years	
NAME							<\$1million	<\$5million
							<\$10million	<\$15million
City, State, ZIP code							Age of Firm in years	
NAME							<\$1million	<\$5million
							<\$10million	<\$15million
City, State, ZIP code							Age of Firm in years	

Add additional rows or pages as needed.

ATTACHMENT 4

Link to California Unified Certification Program DBE Directory

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

ATTACHMENT 5

Overall Goal Calculations

The overall Disadvantaged Business Enterprise (DBE) goal formula, mandated by the US Department of Transportation, is calculated in two sequential steps.

Step 1: Base Figure Calculation

Determine the relative availability of DBEs in your market area by dividing the number of ready, willing, and able DBE firms by the total number of all ready, willing, and able firms.

$$\text{Base Figure} = \frac{\text{Number of ready, willing, and able DBEs}}{\text{Number of all ready, willing, and able firms (DBE + Non-DBE)}}$$

Step 2: Base Figure Adjustment

Examine all available evidence in your local jurisdiction to determine if an adjustment to the Step 1 Base Figure is necessary. The most common adjustment formula uses historical median past participation.

$$\text{Overall Goal} = \frac{\text{Step 1 Base Figure} + \text{Median of Historical Past Participation}}{2}$$

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 ST TIER)	DESCRIPTION OF WORK	INDICATE BELOW FOR ALL SUBCONTRACTORS C = Consultant Or Contractor S = Supplier ¹ M= Manufacturer B = Broker ¹ 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.							
9. TOTAL BID/PROPOSAL PRICE (Should equal Line #3 above) →				\$	\$	\$	\$

¹If 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 ¹ M = Manufacturer B = Broker ¹ 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)				\$	\$	\$	\$

¹If 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: _____
Street City State Zip
3. Mailing Address: _____
(If different from above) PO. Box or Street Address City State Zip
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**? Yes No

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

- | | DBE | Non-DBE |
|--|--------------------------|--------------------------|
| 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: _____ | | |

14. Is your business currently participating in a Joint Venture? Yes No

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?
- | | DBE | Non-DBE |
|---|--------------------------|--------------------------|
| 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 furnished¹:

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 do your company own? _____
- b. How many trucks do 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 is 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:

¹
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

1. 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 represent 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

Name of DBE Business

Authorized Signature of Business¹

Authorized Signature of DBE Business

Typed or Printed Name of Signee

Typed or Printed Name of Signee

Title of Signee

Title of Signee

Telephone

Telephone

Email

Email

Date

Date

¹
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 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 require 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 Development 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 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

VTA has established an approved "Hearing Procedures" (Attachment 14) for addressing grievances and complaints between contractors and subcontractors. These procedures are designed to support the VTA Office of Business Development Program (OBDP) staff in effectively managing disputes that arise from or are related to contracts between contractors and subcontractors. Disputes between the contractor and any lower tier DBE subcontractors, which cannot be resolved 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 be incorporated 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, money 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/>

ATTACHMENT 9

California UCP Agreement

<https://www.lawa.org/sites/lawa/files/documents/CUCP%20MOA%20FINAL%20Approved%20Feb%2012%202020%20For%20Signature%2020225%20%20signed.pdf>

ATTACHMENT 10

Procedures for Removal of DBE's Eligibility and Certification Appeals

[https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/final-rule-section-26-](https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/final-rule-section-26-87)

[87](https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/final-rule-section-26-87)

ATTACHMENT 11

SMALL BUSINESS ELEMENT

VTA has adopted and maintains a race-neutral Small Business Element (“SBE Program”) in accordance with 49 CFR §26.39, as amended by the October 3, 2025, USDOT Interim Final Rule (IFR), to facilitate and encourage participation by small businesses on federally assisted, state-funded, and locally funded contracts.

The SBE Program is intended to provide small businesses, including DBE-certified firms, with maximum practicable opportunities to compete for and perform on VTA contracts through race-neutral measures and small business development initiatives. Such measures may include, but are not limited to, outreach and networking events, technical assistance, business development workshops, small business resource support, unbundling of contract requirements where feasible, and other initiatives designed to reduce barriers to participation for small businesses.

VTA, in coordination with the VTA Business Outreach Committee (“BOC”) and other regional transportation and public agencies, conducts outreach and educational activities intended to increase awareness of contracting opportunities and assist small businesses in navigating public procurement processes.

VTA’s SBE Program operates independently of any DBE contract goal requirements under 49 CFR Part 26 and may continue to be implemented through race-neutral means consistent with applicable Federal law, USDOT guidance, and the October 3, 2025, IFR. VTA will continue to evaluate and implement appropriate race-neutral small business measures to ensure small businesses have meaningful opportunities to participate in federally assisted contracting activities.

ATTACHMENT 12

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) DBE SHORTFALL ANALYSIS WRITTEN PROCESS

In accordance with applicable Federal Transit Administration (FTA) regulations, including 49 CFR §26.47(c), and consistent with the October 3, 2025 USDOT Disadvantaged Business Enterprise (DBE) Program Interim Final Rule (IFR), VTA shall analyze and address any significant shortfall between its overall approved DBE participation goal and actual DBE participation attained on DOT-assisted contracts.

To the extent applicable under current USDOT requirements and authorized DBE goal-setting activities, VTA shall utilize the following procedures to evaluate participation outcomes and identify appropriate corrective measures.

1. **Identification of Shortfall:** VTA shall periodically review and evaluate DBE participation achieved on DOT-assisted contracts in comparison to its approved overall DBE participation goal.

If VTA determines that the actual DBE participation attained is significantly below the approved overall DBE goal, VTA shall conduct a shortfall analysis in accordance with 49 CFR §26.47(c).

Nothing in this section shall require VTA to utilize race-conscious measures except as expressly authorized by applicable federal law, USDOT regulations, or written USDOT approval.

2. **Shortfall Analysis:** The shortfall analysis shall evaluate factors that may have contributed to the difference between the approved DBE goal and actual participation achieved. The analysis may include, but is not limited to, the following:
 - **Data Review:** Review of relevant contract, procurement, participation, payment, and utilization data associated with DOT-assisted contracts.
 - **Evaluation of Contracting and Procurement Activities:** Assessment of procurement methods, contract packaging, subcontracting opportunities, solicitation practices, outreach activities, and related contracting practices affecting participation opportunities.
 - **Market Conditions:** Assessment of the availability of certified DBE firms within the relevant geographic and product markets, including evaluation of market conditions, industry capacity, competition, economic conditions, and availability of firms within specific work categories.
 - **Review of Participation Barriers:** Identification of factors that may affect participation by small businesses and certified DBE firms, including barriers relating to bonding, financing, insurance, workforce availability, equipment access, scheduling, or subcontracting opportunities.
 - **Internal Process Review:** Evaluation of internal administrative procedures, contract monitoring practices, outreach methods, compliance oversight, and

other program administration activities to identify opportunities for improvement.

3. **Corrective Actions:** Based upon the results of the shortfall analysis, VTA may implement corrective actions or program adjustments intended to improve participation opportunities and program administration. Such actions may include, but are not limited to:
 - **Enhanced Outreach Engagement:** Increasing outreach, industry engagement, networking events, educational workshops, and communications regarding contracting opportunities and procurement requirements.
 - **Review of Contracting Practices:** Evaluating whether contract structuring, procurement sequencing, subcontracting opportunities, or packaging strategies may be adjusted to encourage broader participation by small businesses and certified DBE firms.
 - **Training and Technical Assistance:** Providing or facilitating technical assistance, training opportunities, compliance education, business development support, or resource referrals for certified DBE firms and small businesses.
 - **Collaboration with Stakeholders:** Engaging industry organizations, transportation partners, trade associations, community organizations, contractors, and other stakeholders regarding participation opportunities and potential program improvements.
 - **Monitoring and Evaluation:** Strengthening monitoring, reporting, utilization tracking, subcontract compliance oversight, prompt payment monitoring, and related compliance review procedures.
4. **Reporting to FTA:** Following the completion of the shortfall analysis and the identification of corrective actions, VTA will prepare and submit a detailed report to the FTA, as required by 49 CFR Part 26.47(c). This report will include:
 - A summary of the shortfall analysis
 - The reasons for the shortfall
 - The corrective actions that will be implemented to address the shortfall
 - A timeline for implementing corrective actions
5. **Ongoing Monitoring:** VTA shall continue to monitor participation outcomes, program administration activities, and implementation of corrective measures to evaluate effectiveness and regulatory compliance.

VTA may revise, supplement, or discontinue corrective actions as appropriate based on updated participation data, market conditions, regulatory requirements, or USDOT guidance.

These procedures are intended solely to support compliance with applicable federal DBE Program requirements and shall be implemented consistent with current federal law, USDOT regulations, and any limitations or directives contained in the October 3, 2025 USDOT DBE Program Interim Final Rule.

ATTACHMENT 13

Santa Clara Valley Transportation Authority Hearing Procedures

I. Introductions and Preliminary Matters

- A. The Hearing Officer shall identify the purpose of the hearing and identify the parties involved, including the Contractor and the Subcontractor that is the subject of the proceedings.
- B. All individuals participating in the hearing, including legal counsel or authorized representatives of any party, shall state their names and describe the capacity in which they will participate.
- C. Prior to the presentation of evidence, the parties may ask procedural questions regarding the hearing process.
- D. The purpose of the hearing shall be limited to determining whether the proposed action, including any proposed substitution, termination, or related contract compliance action, is consistent with applicable contract provisions, federal regulations, and VTA procedures.

II. Presentation of Evidence

- A. The hearing shall be conducted in an informal administrative manner and shall not be governed by the formal rules of evidence applicable in judicial proceedings
- B. The Hearing Officer may consider relevant evidence of the type reasonably relied upon by responsible persons in the conduct of serious affairs.
- C. Each party may:
 - 1. Present documentary, testimonial, and physical evidence;
 - 2. Call and examine witnesses; and
 - 3. Present rebuttal or impeachment evidence relevant to the matters under consideration.
- D. Each party shall have a reasonable opportunity to question witnesses presented by the opposing party regarding relevant matters raised during the hearing.
- E. Oral testimony shall be provided under oath or affirmation.
- F. The hearing may be recorded by audio recording, video recording, digital recording, or other reasonable means as determined by VTA. Any party may arrange for a court reporter at its own expense.

III. Conduct of the Hearing

- A. The Hearing Officer shall have authority to regulate the orderly conduct of the hearing, rule on procedural matters, determine relevancy of evidence, establish reasonable time limits, and take other actions necessary to ensure a fair and efficient

proceeding.

B. The party requesting or supporting the proposed action shall present evidence supporting its position.

C. The opposing party shall have the opportunity to respond, present contrary evidence, and challenge evidence presented by the other party.

D. The Hearing Officer may ask questions of any witness or party to clarify the record.

E. The Hearing Officer may continue the hearing to a later date if additional time is reasonably necessary to complete the proceeding or allow submission of additional relevant information.

F. Nothing in these procedures shall limit VTA's authority to administer its contracts, enforce applicable federal regulations, or implement requirements associated with the Disadvantaged Business Enterprise (DBE) Program under 49 CFR Part 26.

IV. Conclusion of the Hearing / Written Decision

A. Following the conclusion of the hearing, the Hearing Officer shall take the matter under submission.

B. The Hearing Officer shall issue a written decision within a reasonable time based upon the evidence presented and applicable contract provisions, laws, regulations, and VTA procedures.

C. The written decision may include findings regarding whether the proposed action is supported by the evidence and consistent with applicable contractual and regulatory requirements.

D. The written decision shall be transmitted to the parties electronically, by mail, or by other reasonable means.

E. These procedures are administrative in nature and are intended to provide a fair opportunity for the parties to present information relevant to the matters under consideration. Nothing in these procedures shall create independent contractual rights or limit any remedies otherwise available under applicable law or contract provisions.