

**Santa Clara Valley  
Transportation Authority**

**Small Business Enterprise  
(SBE) Program**





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## POLICY STATEMENT

### Objectives/Policy Statement

In 1996, California approved a ballot measure amending the state constitution to prohibit state government institutions from considering race, sex, or ethnicity, specifically in the areas of public employment, public contracting or public education, known as Proposition 209. In response, Santa Clara Valley Transportation Authority (*VTA*) implemented the Small Business Enterprise (SBE) Program, to provide an equal opportunity for **all** small business firms to participate on non-federally funded contracts.

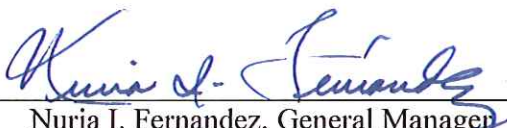
*VTA* has established an SBE program to ensure that SBEs as defined in 13 Code of Federal Regulations (CFR) Part 121 and 49 CFR Part 26 are afforded every opportunity to participate in *VTA*'s contracting program.

The objectives of the SBE Program include:

1. To ensure nondiscrimination in the award and administration of non-federally funded contracts;
2. To create a level playing field on which SBEs can compete fairly on non-federally funded contracts;
3. To ensure that only firms that fully meet SBE certification eligibility standards of Title 13, Part 121 of the U.S. Small Business Administration (SBA) and 49 Code of Federal Regulations, Part 26, are permitted to participate as SBEs;
4. To help remove barriers to the participation of SBEs in non-federally funded contracts;
5. To assist the development of firms that can compete successfully in the market place outside the SBE Program.

Sylvester Fadal, Deputy Director of Human Resources and Diversity Programs, has been delegated as the SBE Liaison Officer (SBELO). In that capacity, Sylvester Fadal is responsible for implementing all aspects of the SBE Program. Implementation of the SBE Program is accorded the same priority as compliance with all other legal obligations incurred by *VTA* in its financial assistance agreements with the State and/or Local requirements.

A copy of this policy statement is available through the Office of Small and Disadvantaged Businesses and on the *VTA* website at [www.vta.org/osdb](http://www.vta.org/osdb).

  
\_\_\_\_\_  
Nuria I. Fernandez, General Manager  
Santa Clara Valley Transportation Authority

6-12-14  
Date



**SUBPART A – GENERAL REQUIREMENTS**

**A. Objectives**

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

**B. Applicability**

VTA is a recipient of state and local funds. As a condition of this assistance, and in compliance with Proposition 209, VTA shall implement a small business program that prohibits consideration of race, sex, or ethnicity, specifically in the areas of public contracting. This program sets forth the policies and procedures to be implemented by VTA to ensure that all small businesses shall have the maximum opportunity to participate in all VTA non-federally funded contracts.

**C. Authority**

Authority and references for VTA’s SBE Program are derived from, but not limited to, the following:

1. Proposition 209 which amends Article I of California Constitution to prohibit “preferential treatment” on the basis of race, sex, color, ethnicity, and national origin in public employment, education and contracting;
2. Title 49 Code of Federal Regulations Part 26.39 - Small Business Participation and Part 26.65 -What rules govern business size determination?;
3. Title 13 Code of Federal Regulations Part 121; and
4. California Public Contract Code sections 2000 et seq.

**D. Non-discrimination**

VTA will ensure that the following clause is placed in every non-federally funded contract and subcontract:

During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, age (over 40) or sexual orientation, and the denial of family care leave. The contractor shall carry out all applicable Federal, State and local requirements in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of the contract, which may result in the termination of this contract or such other remedy as VTA deems appropriate.

**E. Definitions**

VTA will adopt the following definitions listed below for this program:

Appeals – A formal filing by a business entity who has been denied certification by VTA as a Small Business Enterprise (SBE).



California Unified Certification Program (CUCP) – One-stop certification clearinghouse, enabling applicants to apply once for DBE certification. The CUCP DBE database can be accessed at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm).

Commercially Useful Function (CUF) – An SBE performs a commercially useful function when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. An SBE does not perform a CUF if it does not perform or exercise responsibility for at least 30 percent of the total cost of its contract than would be expected on the basis of normal industry practice for the type of work involved. If, in **VTA's** judgment, the firm does not perform a CUF in the transaction, no credit toward the goal may be awarded.

Disadvantaged Business Enterprise (DBE) – a for-profit small business that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it. **Any certified DBE is eligible to participate as an SBE toward the SBE participation goal.**

Goal – A numerically expressed objective which **VTA** or its contractors are required to achieve or make good faith efforts to achieve.

Good Faith Efforts – Efforts undertaken to achieve the established SBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill **VTA's** SBE Program requirement.

North American Industrial Classification System (NAICS) – The classification number which best describes the primary business of a firm. The basis for industry classification changed from the 1987 Standard Industrial Classification System (SIC) to the 2002 NAICS. See **Attachment E**, “SBE Certification Procedures and Forms”.

Pre-Bid/Pre-Proposal Conference – A meeting held by **VTA** prior to the bid/proposal closing date of a particular project at which prospective bidders/proposers are advised of **VTA** specification requirements which may include SBE provisions.

Small Business Enterprise (SBE) -Small Business Enterprise is defined by SBA as a small business concern that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period; and meets SBA's size standards of 13 CFR Part 121, established for types of economic activity, or industry, generally under the NAICS.

SBE Directory – **VTA's** list of firms certified by **VTA**, which is used by **VTA** and its contractors to identify SBE potential contractors and subcontractors and suppliers. The SBE directory can be accessed at the website link at [http://www.vta.org/procurement/general/sbe\\_search.html](http://www.vta.org/procurement/general/sbe_search.html).



## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **A. SBE Program Updates**

VTA General Manager will provide to the Board updates representing significant changes in the Program.

### **B. Responsibility of the SBE Program Implementation**

VTA has designated the following individual as its SBE Liaison Officer (SBELO):

Sylvester Fadal  
Dep. Director of Human Resources and Diversity Programs  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building A San Jose, CA 95110  
Phone: (408) 321-5605. [Email: Sylvester.Fadal@vta.org](mailto:Sylvester.Fadal@vta.org)

In that capacity, the SBELO is responsible for implementing all aspects of the SBE program and ensuring that VTA complies with all provisions of 13 CFR Part 121 and Proposition 209. The SBELO has direct, independent access to the General Manager concerning SBE Program matters. An organization chart displaying the SBELO's position in the organization is found in **Attachment A**, "Organizational Chart".

The SBELO is responsible for developing, implementing and monitoring the SBE program, in coordination with other appropriate officials. The SBELO has a staff of four to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set project specific SBE goals.
4. Ensures that bid notices and requests for proposals are available to SBEs in a timely manner.
5. Identifies contracts and procurements so that SBE goals are included in solicitations.
6. Analyzes VTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid/pre-proposal meetings.
8. Advises the General Manager and/or VTA Board of Directors on SBE matters and achievement.
9. Chairs the SBE Advisory Committee.
10. Provides SBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in SBE training seminars.
12. Certifies SBEs according to the certification criteria of the SBE Program.
13. Provides outreach to SBEs and community organizations to advise them of opportunities.
14. Maintains the VTA's updated directory on certified SBEs.



### C. SBE Directory

VTA administers a full SBE certification program. SBE certification activities are updated monthly. Only firms that are certified by the VTA Office of Small and Disadvantaged Businesses (OSDB) are included in the VTA SBE database. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a SBE. Interested persons can contact the VTA SBELO for more information about this Directory and/or obtain access at [http://www.vta.org/procurement/general/sbe\\_search.html](http://www.vta.org/procurement/general/sbe_search.html).

### D. Record Keeping Requirements

#### Uniform Report of SBE Awards or Commitments and Payments

The OSDB Department will monitor the VTA's SBE contracts to ensure that the contractors are in compliance with the requirements and regulations of the SBE program. OSDB staff will report SBE participation to the General Manager using the Uniform Report of SBE Awards or Commitments and Payments. The report is generated from the web-based Diversity Tracking System, B2GNow, see **Attachment B**, "Sample Uniform Report of SBE Awards or Commitments/Payments".

#### Bidders List

VTA will create a bidders list, consisting of information about all firms that bid on VTA contracts. The purpose of this requirement is to allow use of the bidders list as historical participation information and information that may be considered in the SBE goal setting. The bidder list will include the name, address, certification status, age, and annual gross receipts of firms.

VTA collects this information on a form in **Attachment C**, "Form 4A - Supplemental Contractor/Proposer and Subcontractor Information" and/or **Attachment D**, "Listing of DBE/SBE Contractor or Subcontractors," provided with all solicitations to bidders/proposers. The form directs all respondents and their subcontractors to report bidders' list information on the form and submit it with its bids or proposal documents.

#### Information, Confidentiality, and Cooperation

VTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

VTA will require contractors to maintain records and documents of payments to SBEs for three years following the performance of the contract. VTA will perform interim audits of contract payments to SBEs. The audit will review payments to SBE subcontractors to ensure that the actual amount paid to SBE subcontractors equals or exceeds the dollar amounts stated in the schedule of SBE participation.

### E. Public Outreach

VTA shall participate in outreach events with other Bay Area Transportation Agencies and community based organizations to leverage its efforts to assist small and disadvantaged firms. VTA shall also participate in Caltrans' CalMentor Protégé Program for small business development.



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

### **A. Overall Goals**

VTA is committed to the SBE overall goal of **19 percent** on State and locally funded contracts and procurement opportunities. (VTA adopted 19% in 2000).

### **B. Goal Methodology**

The SBE contract specific goals are determined using the SBEs and DBEs combined relative availability. The methodology used is similar to the 2-step process as specified in 49 CFR Section 26.45. The first step is to determine the relative availability of SBEs and DBEs in the market area, “base figure.” Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in the market area that perform work in the same NAICS codes. Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in the market area. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible in the SBE and DBE participation the recipient would expect in the absence of discrimination based on past participation of SBEs and DBEs on projects.

### **C. Goal Setting and Accountability**

VTA will establish contract goals only on those contracts that have subcontracting possibilities. VTA will not establish a contract goal on every State or locally funded contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of SBEs and DBEs to perform the particular type of work).

The OSDB Department will monitor the VTA's SBE contracts to ensure that the contractors are in compliance with the requirements and regulations of the SBE program. The Uniform Report of SBE Awards or Commitments and Payments are generated from the web-based Diversity Tracking System, B2GNow.

### **D. Good Faith Efforts Procedures**

#### **Demonstration of Good Faith Efforts**

The obligation of the bidder/proposer is to meet the stated contract goal. The successful bidder/proposer can either meet the goal or demonstrate that it has made good faith efforts documentation. “Good faith efforts” means that they have taken all necessary and reasonable steps to achieve the SBE participation goal, which by their scope, intensity and appropriateness could reasonably be expected to fulfill the goal. Only those efforts made prior to bid opening will be considered in evaluating good faith efforts. Mere *pro forma* efforts are not sufficient good faith efforts to meet the SBE contract requirements.

The Good Faith Effort (GFE) Committee is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. Only those efforts made prior to bid/proposal will be considered in evaluating adequate efforts to meet the SBE goal. Failure to submit the required documentation at the time stated in the contract document may be grounds for finding the bid/proposal to be non-responsive.





The Bidder/Proposer may use the following efforts as part of their documentation of the GFE which may include, but is not limited to:

1. Attendance at Pre-Bid/Pre-Proposal Meeting

<i>Effort:</i> Attendance at pre-bid/pre-proposal meetings, if held by VTA.
<i>Evidence:</i> Name, title and date of person(s) attending, to be verified by attendee sign-in sheet.

2. Identification of scope of work for subcontracts in order to meet the project goal

<i>Effort:</i> Selecting portions of the work that can be subcontracted to SBEs/DBEs in order to increase the likelihood that the overall SBE/DBE goal will be achieved. This includes where appropriate, breaking out contract work items into economically feasible units to facilitate SBE/DBE utilization.
<i>Evidence:</i> Identifying the scope of work the Bidder/Proposer intends to perform with its own workforce and identifying the subcontracting items the bidder/proposer made available to SBEs/DBEs to meet the established SBE goal.

3. Advertisement of subcontracting opportunities

<i>Effort:</i> Advertisement in trade association publications and disadvantaged/minority and woman owned business focused media. Advertisements must identify specific subcontracting opportunities being solicited, project name and location, bidder/proposer contact person including name, address, phone, fax, and email, and bid solicitation submittal due date. Advertisements should appear a minimum of 10 days prior to bid due date.
<i>Evidence:</i> As verification of publication, Bidder/Proposer must provide a listing of advertisements placed, including copies of advertisement tear sheets and/or proof of publication containing at minimum the information specified above.

4. Written Requests for Bids/Proposals

<i>Effort:</i> Provision of written notices to the maximum number of SBEs/DBEs firms to solicit interest for each subcontracting area identified sufficient to meet the established goal. Notices should be issued at least 10 days prior to bid submittal due date.
<i>Evidence:</i> Copy of the solicitation letter, list of recipients grouped by each identified subcontracting area identified and identification of mode of communication (letter, email, fax), including corresponding copies of letters and/or fax confirmations. A minimum of ten (10) SBE/DBE firms shall constitute a sufficient number for each subcontracting area, North American Industry Classification System (NAICS) code, provided the databases contain at least 10 firms for that category.

5. Solicitation Follow-Up

<i>Effort:</i> Subsequent efforts to solicit SBEs/DBEs within all available subcontracting areas. The follow-up solicitation should occur within a reasonable time of the initial solicitation, in order to allow the Bidder/Proposer to solicit additional SBEs/DBEs and identify additional subcontracting items to draw greater interest and sub-bids.
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*Evidence:* Bidder/Proposer must determine with certainty if the SBEs/DBEs initially solicited are interested by taking appropriate steps to follow up on initial solicitations. Documentation should include: a) names, addresses and telephone numbers of SBEs/DBEs contacted by each subcontracting area identified/solicited; b) description of timely information provided to SBEs/DBEs regarding plans and specifications for portions of the scope of work to assist SBEs/DBEs in responding to the solicitation; c) statement of justification re: unsuccessful solicitation of SBEs/DBEs, and d) description of additional efforts the bidder/proposer made to encourage greater interest from SBEs/DBEs to submit subbids.

#### 6. Negotiation in Good Faith

*Effort:* Negotiating in good faith with interested SBEs/DBEs to facilitate SBE/DBE utilization. Utilize a sound basis for selection and/or rejection of SBE/DBE subbids/proposals.

*Evidence:* Evidence of such negotiation includes, a) the names, addresses, and phone numbers of SBE/DBEs who were contacted and date(s) of contact, b) a description of the information provided to SBE/DBEs regarding the plans and specifications or scope of work for portions of work to be performed, and c) a statement explaining why additional agreements with SBE/DBEs were not reached.

#### 7. Performance of Other Bidders/Proposers in meeting the SBE Goal

*Effort:* In determining where the bidder/proposer has made adequate efforts to meet the SBE/DBE goal, VTA will take into account the performance of other bidders/proposers in meeting the established contract-specific goal requirements.

*Evidence:* The individual bidder/proposer must meet or exceed the average SBE/DBE utilization obtained by the three (3) other bidders/proposers to adequately demonstrate that the apparent successful bidder/proposer has taken all the reasonable efforts towards meeting the contract-specific goal.

#### 8. Provision of assistance to DBEs to obtain bonding, lines of credit and/or insurance

*Effort:* Provision of assistance to interested SBEs/DBEs in obtaining bonding, lines of credit, and/or insurance as required by the Bidder/Proposer.

*Evidence:* Brief description of the type of assistance provided by the Bidder/Proposer to interested SBEs/DBEs in obtaining bonding, lines of credit, and/or insurance.

#### 9. Utilization of community outreach services

*Effort:* Utilization of outreach services within the DBE and SBE community, including construction/consultant groups, local, State and federal SBE/DBE offices and other organizations that provide assistance in the recruitment and placement of SBEs/DBEs.

*Evidence:* Copies of letters, faxes, telephone logs, etc. used to contact organizations, which include the names of organizations/groups, dates, names of contacts, and telephone numbers; and copies of correspondence received from these entities acknowledging contact.



Administrative Reconsideration

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

Sylvester Fadal  
Dep. Director of Human Resources and Diversity Programs  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building A San Jose, CA 95110

As part of this reconsideration, the bidder/proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts. In addition, the bidder/proposer can request to meet in person with the **VTA** SBELO to discuss the issue of whether it met the goal or made adequate good faith efforts. **VTA** will send the bidder/proposer a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or did not demonstrate good faith efforts.

Good Faith Efforts when a SBE is Terminated/Replaced on a Contract with Contract Goals

A SBE subcontractor or supplier shall not be replaced without the prior written consent of **VTA**. Contractor shall make good faith efforts to find another SBE subcontractor or supplier to substitute for the original SBE that is unwilling or unable to perform the work. The efforts employed by the Contractor shall be those that one could reasonably expect a Contractor to take if the Contractor were actively and aggressively trying to engage a certified SBE firm to substitute for an SBE firm that has to be replaced and shall include the following:

1. Contractor shall immediately notify **VTA** in writing of its intent to replace a SBE firm, and of the reasons therefore, prior to any solicitation or advertisement for replacement firms. A copy of the notice shall be provided to the **VTA** Office of Small & Disadvantaged Businesses (OSDB).
2. **VTA** will provide written notice to the SBE firm of Contractor's request for substitution and of the reasons therefore and they will be requested to provide any written objections within five working days.
3. Contractor shall utilize the **VTA** SBE Directory for identifying certified SBE firms for solicitation.
4. Contractor shall provide written notice to at least five firms in each work or material/supply category to be substituted. If Contractor provides written notice to less than five firms Contractor shall explain to OSDB in writing why the number of firms solicited was sufficient. Written notice shall be sent first to firms located in the County of Santa Clara and its contiguous counties ("local firms") and then, where appropriate, to out-of-area SBE firms.
5. Contractor shall contact the SBE firms solicited to determine with certainty whether the firms are interested in bidding on the project. This follow-up shall be documented with telephone logs, fax logs or other written documentation and submitted to OSDB.



6. Contractor shall provide OSDB with the following information:

- A list and copies of all SBE and non-SBE responses to the solicitation, including all bids received;
- If a bid is rejected by Contractor, the reasons for the rejection;
- If Contractor rejected an SBE firm as unqualified, a description of the qualification assessment conducted by Contractor and the factors considered.

A Contractor who fails to use good faith efforts to replace an SBE firm with another SBE firm may be subject to the imposition of a penalty of up to 15% of the value of the work of the subcontractor or supplier replaced.

**E. Counting SBE Participation**

SBEs may perform as Contractors, subcontractors to a Contractor (1st tier), or subcontractor to subcontractor (2nd tier). Only the value of the work actually performed by the SBE, including materials and supplies, will be counted toward the SBE participation goal.

A SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work. If a SBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the SBE subcontracts a greater portion of work of a contract than would be expected on the basis of normal industry practice, then it will be presumed that the SBE is not performing a commercially useful function.

Credit for a SBE vendor of materials or supplies is limited to 60% of the amount to be paid to the vendor for the materials or supplies unless the vendor manufactures or substantially alters the goods. Credit for SBE brokers is limited to only the fees and commissions portion of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, toward the SBE goal.

Credit for SBE trucking firms is limited to the amount performed by the SBE's own trucks and drivers and by VTA certified SBE trucking subhaulers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

*In a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the SBE performs with its own forces will be counted toward the SBE goal.*

*During the life of a contract, work performed by SBE firms whose certification has expired will not continue to be counted toward the SBE participation goal. Only work performed by a VTA certified SBE firm will be counted toward the SBE participation goal when the SBE firm has been paid.*



#### **F. Quarterly SBE Utilization Report**

Contractors are required to submit quarterly SBE Utilization Reports electronically to the **VTA** Office of Small & Disadvantaged Businesses. These quarterly reports shall be submitted electronically and the Contractor will document the dollar value of payments to SBE/DBE firms and the percentage of the contract completed. **VTA** will monitor the contract for compliance with SBE requirements.

This system is web-based, accessible from any computer via the internet at <https://vta.sdbbe.com>. Each Contractor and subcontractor will receive an email providing them with Log On identification, and a temporary password and instructions on how to use the system. Training will also be provided upon request. Contractor will include this requirement in all of its subcontracts and purchase orders when required to provide or verify SBE utilization documentation.

If the SBE Utilization Reports indicate potential problems, such as a failure to comply with the contract SBE participation goal, the Contractor shall meet with the appropriate **VTA** representative(s) to address any deficiencies and discuss appropriate corrective actions. When the Contract completion reaches 50% and the SBE participation goal completed is less than 50%, a detailed report of the reasons why must be submitted to **VTA** stating a plan to reach the SBE participation goal by Contract completion.

Prior to final payment, Contractor will be required to submit a final SBE Utilization Report by selecting the "Final Audit" reporting designation within B2GNow database system. In addition to payments to the SBEs, the final report must include payments to and other information about all other businesses, including non-SBE subcontractors, suppliers of materials, trucking firms, consultants and others.

Failure by Contractor to submit required reports as described above may be considered grounds for a determination by **VTA** of non-responsibility in consideration of Contractor's eligibility to bid on or be awarded future work.



**SUBPART D – CERTIFICATION STANDARDS AND PROCEDURES**

**A. Certification Process**

VTA will use the certification standards to determine the eligibility of firms to participate as SBEs in VTA contracts. To be certified as a SBE, a firm must meet all certification eligibility standards. VTA will make certification decisions based on the facts as a whole. For information about the certification process or to apply for certification, firms should contact:

Liz Brazil, OSDB Manager  
Santa Clara Valley Transportation Authority  
3331 North First Street, Building A  
San Jose, CA 95134  
Phone: (408) 321-5874  
Email: Liz.Brazil@vta.org

The certification application forms and documentation requirements are found at <http://www.vta.org/inside/downloads/index.html#sbe> or **Attachment E**, “SBE Certification Procedures and Forms”. The certification review process includes, but is not limited to:

1. Preliminary Review – Submitted documents are checked for completeness. All applications must be signed. Applications not signed will be returned.
2. Desk Audit – Supporting documents are reviewed and additional information may be requested to ensure that it meets the SBE program criteria.
3. Final Recommendation – A recommendation for approval or denial is made after a thorough review of the application and submitted documents .
4. All certifications are valid until a firm is de-certified if it no longer meets eligibility standards. Certified firms are subject to renewal review after 5 years. An SBE Renewal Application is required from SBE certified firms to confirm their continued eligibility.

**B. Certification Eligibility Standards**

Only firms certified eligible by VTA’s Office of Small and Disadvantaged Businesses (OSDB) are eligible to participate in VTA’s SBE Program.

1. The SBE certification program is intended to support participation in VTA contracts by businesses owned and controlled by small business owners. VTA shall ensure that the SBE Program benefits only small businesses which are owned and controlled, in both form and substance, by small business owners and that the ownership and control by small business owners is real and substantial.
2. Firms seeking SBE certification shall cooperate fully with VTA’s request for information relevant to the certification process. VTA may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in



- attempts to evade or subvert the intent or requirements of the SBE Program. Failure or refusal to provide such information may be grounds for denial or removal of certification.
3. An SBE is a for-profit business that has demonstrated by a preponderance of evidence that it satisfies the following SBE program certification standards:

Business Size Standards

- a. The SBE Program at **VTA** defines small business using the Small Business Administration size standards of 13 CFR Part 121.
- b. Applicant SBE firms must demonstrate that their business, over the last consecutive three years, has gross receipts that average less than \$22.41 million per year. This figure may be periodically adjusted to be consistent with the SBA size standards established for the SBE Program.

Quality of Ownership

The ownership by each of these individuals must be real, substantial and continuing, going beyond pro forma ownership, as represented in merely the ownership documents.

Affiliation

The SBE Program at **VTA** defines affiliation using the Small Business Administration affiliation rules, 13 CFR Part 121.103.

Ownership Discretion and Control

- a. The owner(s) should be able to demonstrate the basic decisions pertaining to the daily operations of the business are independently made.
- b. The owner(s) should have some technical competence in the industry for which certification is sought. Technical competence does not mean expert knowledge. It does mean the qualifying owners should have a working knowledge of the technical requirements of the business needed to operate in the industry.
- c. The business must be independent. Its viability must not depend on a relationship with another firm or firms.
- d. The owner(s) should be able to demonstrate that basic decisions pertaining to the daily operations of the business are independently made.
- e. The business must not be subject to any formal or informal restrictions that limit the customary discretion of the owner(s).
- f. The owner(s) must possess the power to direct or change the direction of the management and policies of the firm, and to make day-to-day as well as major and long-term decisions on matters of management policy and operations.
- g. The owner(s) may delegate authority, but such delegations must be revocable and the owners must retain a managerial role and the power to hire and fire the person to whom they delegate.
- h. The owner(s) must have an overall understanding of, and managerial, technical competence and experience directly related to, the type of work in each industry the firm is doing business in and the firm's operations.
- i. Owners must possess all the state or locally required licenses or credentials.



- j. Owner(s) must work in the business in order to be considered as controlling the firm. They cannot engage in outside employment or other business interests that conflict with managing the firm, unless the firm is itself a part-time business.

#### Subsequent Changes in Ownership and/or Control

Applicants are evaluated on the basis of documentation submitted at the time of certification. Any changes contemplated in the ownership and/or control of the firm or the documentation submitted with the application for Certification, including but not limited to those set forth below, must be fully disclosed at the time of application;

- a. Changes in ownership, amendments, modifications, additions, deletions, revisions;
- b. Execution of new agreements, board and/or shareholders' resolutions, memoranda of understanding;
- c. Consolidation, liquidation, reorganization, merger;
- d. Election of new officers and/or directors, appointment of new principals and/or key personnel;
- e. The purchase and/or sale, new issues of shares; and
- f. The purchase or sale of the entire business.

### **C. Certification Appeals and Removals**

#### Appeals

- a. If **VTA** initially determines that an applicant firm does not meet the eligibility requirements for SBE certification, **VTA** shall notify the applicant firm in writing of its findings that led to the denial of certification.
- b. Any firm that disagrees with **VTA**'s denial of its certification may file an appeal with **VTA**, in writing, signed and dated, within ten working days of the denial. The appeal must include the reasons why the applicant disagrees with **VTA**'s denial of the certification and should include any additional documentation to support the appeal.
- c. In appeal proceedings, the applicant has the burden of proof to demonstrate, by a preponderance of evidence, that the business is eligible. **VTA** may require the firm to produce additional documentation to support its certification eligibility.
- d. After considering an appeal, with all relevant information, **VTA** shall make one of the following determinations and inform the SBE in writing of the determination:
  - 1) The SBE application denial is reversed and the firm is certified; or
  - 2) The applicant's denial of certification by **VTA** is upheld; or
  - 3) The SBE application denial is remanded back to OSDB for further review.
  - 4) If the denial of certification is upheld, the decision by **VTA** is administratively final.

#### Removals of Certification

- a. A certified SBE may be removed if it is already a certified DBE. A certified DBE is counted toward the SBE goal credit.
- b. A certified SBE may be removed for ineligibility, for lack of cooperation, or at the wishes of the certified SBE. When a firm's eligibility is removed, the burden of proof for removal of certification shall be on **VTA**.





- c. In a removal of certification for ineligibility, **VTA** must ensure that the decision to remove a firm's SBE certification is made by a **VTA** representative other than those who participated in actions leading to the removal of the firm. **VTA** has designated the Manager of Contracts Administration and Material Management or her/his designee to hear appeals for removals due to ineligibility.
  
- d. **Renewal of Certification:** A firm denied certification or who has had its certification removed under these provisions shall be permitted to re-apply for certification after a period of one year following the date of initial denial or removal.



## **SUBPART E – COMPLIANCE AND ENFORCEMENT**

### **A. Compliance and Enforcement**

VTA has available several remedies to enforce compliance of the SBE Program requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. A finding that the Contractor is not a responsible Contractor for purposes of future contract awards.
3. Termination of Contractor's performance of work under the contract.
4. Any other available remedy.

VTA has implemented the following monitoring mechanisms to ensure compliance with SBE Program requirements:

1. VTA will verify that work committed to SBEs at contract award is actually performed by the SBEs. This will be accomplished by direct observation, interviews and review of submitted documents.
2. VTA will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award with the use of VTA's B2GNow Diversity Tracking System.

### **B. Prompt Payment**

VTA will include the following prompt payment clause in its contract:

The Contractor agrees to pay each subcontractor under the contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the Contractor received from VTA. The Contractor agrees further to return retainage payments to each subcontractor within 7 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 SBE and non-SBE subcontracts.

If VTA determines that the Contractor has failed to comply with the prompt payment provisions set forth above, VTA may give written notice to the Contractor and the Contractor's surety that, if the default is not remedied within 30 days, the Contractor's performance of work under the contract may be terminated. VTA may also impose penalties and sanctions for non-compliance with the prompt payment.

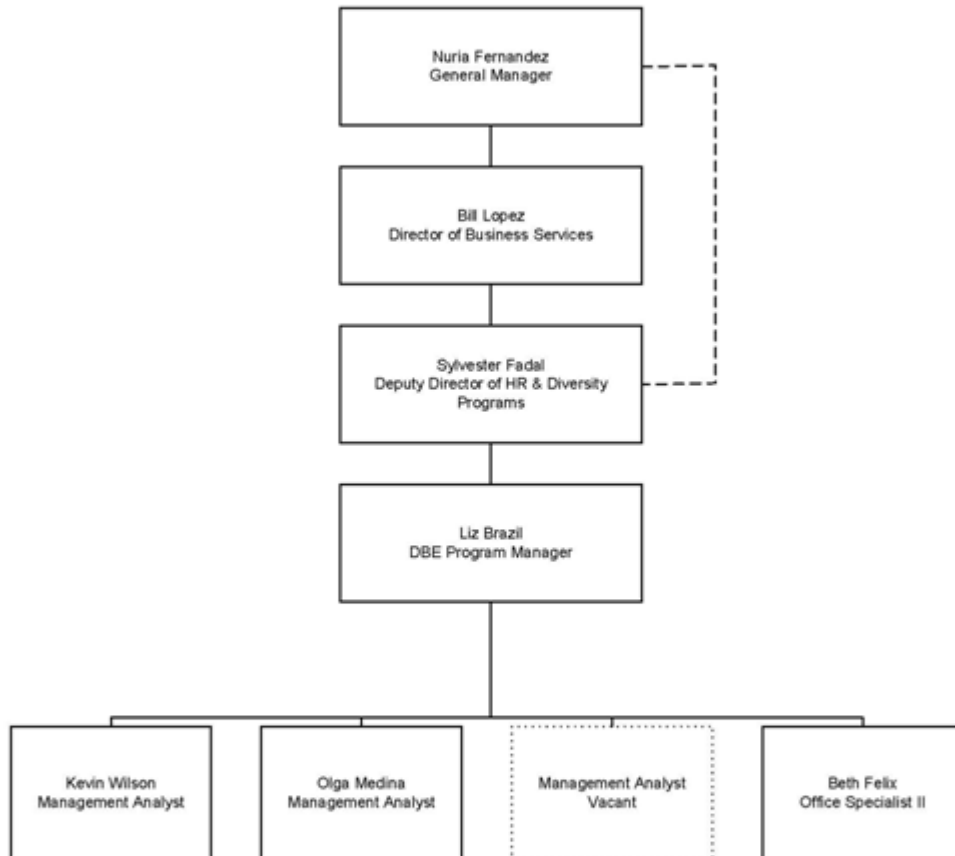


**ATTACHMENT A**  
**Organizational Chart**





## Organizational Chart





**ATTACHMENT B**

**Sample Uniform Report of SBE Awards or Commitments/Payments**

Santa Clara Valley Transportation Authority - OSDB								
Report of SBE Commitments/Awards and Payments								
Reporting Period: Apr 1 - Sept 30, 2013								
Awards/Commitments Made During This Reporting Period (total contracts and subcontracts awarded or committed during the reporting period)	Total Dollar	Total Number	Total to SBEs (dollars)	Total to SBEs (number)	Total to SBEs/size conscious (number)	Total to SBEs/size conscious (dollars)	Total to SBEs/size neutral (dollars)	Percentage of total dollars to SBEs
Prime contracts awarded this period	\$6,001,629.64	7	\$1,251,999.64	5	5	\$1,251,999.64	\$0.00	20.86%
Subcontracts committed/awarded this period	\$730,371.00	12	\$730,371.00	12	12	\$730,371.00	\$0.00	100.00%
<b>Totals</b>			\$1,982,370.64	17	17	\$1,982,370.64	\$0.00	33.03%
SBE Awards/Commitments This Reporting Period - Breakdown By Ethnicity & Gender	Black American	Hispanic American	Native American	Subcont. Asian American	Asian Pacific American	Non-minority Women	Other	Totals for this reporting period
Total Number of Contracts (Prime and Sub)	0	3	1	0	2	2	8	16
Total Dollar Value	\$0.00	\$81,334.00	\$33,222.00	\$0.00	\$419,347.00	\$159,764.00	\$1,288,703.64	\$1,982,370.64
Actual Payments On Contracts Completed This Reporting Period	Number of Prime Contracts Completed		Total Dollar Value of Prime Contracts Completed		Total SBE Participation (dollars)		Percentage of Total SBE Participation	
Size Conscious	0		\$0.00		\$0.00		0.00%	
Size Neutral	0		\$0.00		\$0.00		0.00%	
<b>Totals</b>	0		\$0.00		\$0.00		0.00%	



ATTACHMENT C

Form 4A – Supplemental Contractor/ Proposer and Subcontractor Information

In response to US DOT requirements (49 CFR Part 26.11), all firms bidding on contracts and bidding or quoting subcontractors on DOT assisted projects are required to submit the following information to VTA. The form shall be copied by the bidder and distributed to all bidders. The completed forms are to be submitted at time of bid submittal.

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

Contract Name & Number: \_\_\_\_\_

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

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

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

Fax #: \_\_\_\_\_

Age of Firm: \_\_\_\_\_

(Check one)

Annual Gross Receipts <u>Indicate bracket of income</u>					
		\$500K - \$1M	\$1M - \$4M	\$4M - \$6M	\$6 - \$13M

Check one: DBE \_\_\_\_\_ SBE \_\_\_\_\_ Non-SBE/DBE \_\_\_\_\_

Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ Work/Trade \_\_\_\_\_

Category \_\_\_\_\_

\*A= Asian, AI=Asian Indian, B=Black, C=Caucasian, H=Hispanic, NA=Native American, O=Other

Completed by: \_\_\_\_\_

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

To be completed by bidder:

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

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

The description of this firm's work is: \_\_\_\_\_

VTA, Office of Small & Disadvantaged Businesses  
3331 North First Street, Building A, San Jose, CA 95134-1927  
If you require additional forms or information, call (408) 321-5962



**ATTACHMENT D**

**FORM 4 - LISTING OF DBE/SBE CONTRACTOR OR  
SUBCONTRACTORS**

Firm (Contractor): \_\_\_\_\_ Phone/ Fax: \_\_\_\_\_

DBE: \_\_\_ Yes \_\_\_ No                      SBE: \_\_\_ Yes \_\_\_ No                      Age of Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_ Name & Title: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Signature/ Date: \_\_\_\_\_

***Contract dollar value must exclude work performed by non-SBE/DBEs except materials or equipment purchased and used in this contract.***

**CREDIT FOR SBE VENDOR** of materials or supplies is **limited to 60%** of its expenditures for materials and supplies required under this Contract and obtained from a SBE regular dealer. Credit for SBE manufacturers is given at 100% toward the SBE goal **only where the SBE vendor manufactures or substantially alters the material prior to resale.**

**CREDIT FOR SBE BROKERS** (Distributor or Representative) is limited to the fees and commissions of the amount paid. All other firms receive 100% credit, less work subcontracted by the SBE to non-SBE firms, towards the SBE goal.

**CREDIT FOR SBE TRUCKING FIRMS** is limited to amount performed by the SBEs own trucks and drivers and by certified SBE trucking subhauers. A SBE trucking firm must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

***A SBE must be certified or accepted as Certified by VTA.***

Name & Address of Certified SBE	Certification Number	Agency Certifying	Age of Firm	Dollar Value Of Contract
1				
2				
3				
4				
5				
Description of Work				
1				
2				
3				
4				
5				

SBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

Total Contract Amount    \$ \_\_\_\_\_

SBE Contract Amount:    \$ \_\_\_\_\_

SBE Contract Amount    SBE Goal Achieved:                      SBE Contract Goal:X 100 =  
Base Contract \_\_\_\_\_%                      \_\_\_\_\_%

**IMPORTANT! THIS FORM MUST BE SUBMITTED WITH YOUR BID/PROPOSAL**



ATTACHMENT E  
SBE Certification Procedures and Forms