

Request for Proposals

RFP S20022

**2016 Measure B Citizens’ Oversight Committee Compliance Auditor Services**

March 5, 2020

Carolyn Vargas, Contract Administrator II

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INTRODUCTION: The Santa Clara Valley Transportation Authority, also known as VTA, is the result of a 1995 merger between two previously separate entities: the Santa Clara County Transit District and the Congestion Management Agency for Santa Clara County. VTA is an independent special district responsible for bus and light rail operations, congestion management, specific highway improvement projects and countywide transportation planning. As such, VTA is both an accessible transit provider and multi-modal transportation planning organization involved with transit, highways, roadways, bikeways, and pedestrian facilities. Working under the direction of a 12-member Board of Directors (“Board”), VTA’s annual operating budget is approximately $400 million, and its currently approved capital program is approximately $1 billion. VTA’s bus fleet of 505 buses serves a 346 square mile urbanized service area and operates approximately 18 million miles annually. The 42.2-mile light rail system is served by 99 rail cars and 5 historic trolley cars and operates approximately 2.2 million miles annually. VTA employs approximately 2,050 people, of whom approximately 650 are administrative, clerical and professional positions and 1,400 are operators and maintenance positions. There are four operating/maintenance facilities located within Santa Clara County. The administrative headquarters is located separately from these four facilities.

For more information about VTA, log on to [www.VTA.org](http://www.VTA.org).

**ABOUT MEASURE B**

In November 2016, Santa Clara County voters approved Measure B, a 30-year, half-cent countywide sales tax devoted to enhancing transit, highways, expressways and active-mode transportation (bicycles, pedestrians and complete streets) within Santa Clara County.

The Measure B ballot (“Ballot”) states that: (A) VTA would be the administrator of the tax; (B) collection of the sales tax would begin April 1, 2017 and continue through March 31, 2047; and (C) the measure would fund the 2016 Measure B Program (“Program”) comprised of nine defined program categories of transportation projects, which are:

 Local Streets & Roads  BART Phase II

 Bicycle/Pedestrian  Caltrain Grade Separations

 Caltrain Corridor Capacity Improvements  Highway Interchanges

 County Expressways  SR 85 Corridor

 Transit Operations

The Ballot specifies the order and process for tax revenue distribution and the percentage of Program funds (“Funds”) that are to be allocated to each Program category. In addition, the Ballot provides that the VTA Board of Directors may modify the prescribed allocation amounts for any prudent purpose following the Program amendment process specified in the Ballot.

The Ballot further specifies that: “An independent citizens’ oversight committee shall be appointed to ensure that the Funds are being expended consistent with the approved Program.” It lists the specific duties and responsibilities of that oversight committee, including that the committee shall have an audit conducted annually by an independent auditor that reviews the receipt of revenue and expenditure of Funds.

**ABOUT RFP S20022** The 2016 Measure B Citizens’ Oversight Committee (“MBCOC” or “Committee”) seeks proposals from qualified Certified Public Accountant (CPA) firms to provide annual compliance and/or performance audit services (“Services”) related to the Program.

The Ballot requires the MBCOC to have an audit conducted annually by an independent auditor that will review the receipt of revenue and expenditure of Funds. The Ballot also grants that body authority to select and retain the qualified audit firm of its choice, subject to conformance with competitive bidding requirements specified by Government Code. The selected firm (“Contractor”) reports directly to the MBCOC.

This compliance and/or performance audit will be the primary tool, but not necessarily the only one, that the MBCOC will utilize to render its conclusion on whether Funds are being expended consistent with the approved Program. The MBCOC will then formally report this conclusion to the residents of Santa Clara County.

These compliance and/or performance audit reports will be included in MBCOC agenda packets and will be reviewed in open session at public meetings, and thus become a matter of public record. The audit reports will be posted on VTA’s website and may be made available to the public by other methods determined by the Committee.

**NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING**: The Proposer(s) selected under this RFP will be precluded from submitting proposals or bids as a prime contractor or subcontractor for any future procurement with VTA if the specifications, requirements, scope of services, and/or RFPs for such work were developed or influenced by the work performed under the contract resulting from this RFP. Further, if a contractor or subcontractor obtains or has access to nonpublic information related to a future RFP through work performed under this RFP, that contractor or subcontractor may be barred from submitting proposals as a prime contractor or subcontractor on that future RFP.

Firms currently under contract to provide financial auditing services to VTA at the time of award or during the term of the compliance auditing services contract (“Contract”) are ineligible to propose.

Firms currently under contract to provide auditing services to the County of Santa Clara or any of the 15 cities within Santa Clara County (VTA’s Member Agencies) at the time of award or during the term of the Contract must establish and maintain a staffing plan during the term of the Contract that ensures that the audit partner for this compliance/performance audit engagement does not concurrently provide services to any of VTA’s Member Agencies.

**NOTICE TO PROPOSERS OF REQUIREMENT TO AVOID CONFLICTS OF INTERESTS:** Contractors and subcontractors performing work resulting from this RFP are required to avoid conflicts of interest resulting from services provided to VTA through other engagements. In particular, contractors and subcontractors providing services under any engagements that developed or influenced the requirements, scope of services, or criteria for this RFP are ineligible to participate in the work resulting from this RFP. Contractors and subcontractors providing services under such engagements that involve the supervision, oversight, review, critique, or acceptance of work products under this RFP are also ineligible to participate in the work resulting from this RFP.

Similarly, contractors and subcontractors who have or who have had access to nonpublic information related to this RFP may have a conflict of interest and should refrain from participating in the work resulting from this RFP.

Contractors and subcontractors proposing to provide services under this RFP remain responsible for avoiding conflicts of interest and must review their existing VTA engagements with their prospective teaming partners before submitting proposal under this RFP to assure that conflicts of interest are avoided. Contractors and subcontractors performing work resulting from this RFP must continue to monitor for and avoid conflicts of interest at all times.

In addition to contractors’ and subcontractors’ obligations to avoid conflicts of interest, VTA also monitors for potential conflicts. VTA reviews all potential conflicts, whether actual or apparent, on a case-by-case basis. VTA reserves the right to determine whether an actual conflict exists in its sole discretion and to determine whether a potential conflict of interest exists in its reasonable discretion. Nothing in this RFP is intended to operate as a waiver of either actual or apparent conflicts.

1. INSTRUCTIONS **TO** **PROPOSERS**
2. **Procurement Schedule:** VTA’s procurement schedule dates are listed in Table 1 below. All dates set forth in this RFP are subject to change at VTA’s sole discretion and will be provided to firms submitting a Proposal under this RFP (“Proposers”) as an addendum. All references in this RFP to “time” are Pacific Time.

**Table 1**

|  |  |
| --- | --- |
| **ACTIVITY** | **DATE/TIME** |
| Issue RFP | March 5, 2020 |
| Deadline to Submit Questions | March 13, 2020 at 4:00 p.m. |
| Deadline to Submit Proposal | March 26, 2020 at 4:00 p.m. |
| Interviews | April 16, 2020 |

1. **Designated Point of Contact:** All communications with VTA regarding this RFP shall be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “RFP S20022 2016 Measure B Citizens’ Oversight Committee Compliance Auditor Services.” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by VTA Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this RFP.

Any unauthorized contact related to this RFP is not permitted. Any breach of this provision may result in the Proposer’s submittal being deemed non-responsive and may be cause for rejection.

The Designated Point of Contact for this procurement shall be as follows:

Carolyn Vargas, Contract Administrator

Santa Clara Valley Transportation Authority

3331 North First Street, Building A

San Jose, California 95134

Email: Carolyn.vargas@VTA.org

1. **Examination of Proposal Documents:** By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing quality work to achieve VTA’s objectives.
2. **Addenda/Clarifications:** VTA reserves the right to make changes to these Request for Proposal documents as it may deem appropriate up until the date for submission of the Proposals (set forth in Table 1). Any and all changes to this RFP will be made by written addendum, which will be issued by VTA to all prospective Proposers who have registered and downloaded the Proposal documents at the VTA website. All addendum and other related materials will be posted to the [VTA.org](http://www.vta.org) procurement site. Prospective Proposers will be notified by email when information has been posted to the VTA procurement site for this RFP. NOTHING RELIEVES PROPOSER FROM BEING BOUND BY ADDITIONAL TERMS AND CONDITIONS IN ADDENDA.

Questions or comments regarding this RFP must be submitted in writing and must be received by VTA no later than the date and time stated in Table 1. Email questions must be submitted to the Designated Point of Contact listed above and shall include “RFP S20022 QUESTIONS” in the subject line. Responses from VTA will be published on the VTA online procurement.

1. **Submission of Proposals:** All Proposals shall be submitted to the Designated Point of Contact no later than the date and time stated in Table 1.

The Proposer shall submit one (1) printed copy and one (1) copy of the Proposal in an electronic format in the form of a flash drive.

The package must bear the Proposer’s name and address, and be clearly labeled as follows:

 “RFP S20022 2016 MEASURE B CITIZENS’ OVERSIGHT COMMITTEE COMPLIANCE AUDITOR SERVICES”

All responses, inquiries, and correspondence related to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Proposer submitted as part of the Proposal will become the property of VTA when received by VTA and may be considered public information under applicable law. Any proprietary information in the Proposal should be identified as such. VTA does not typically disclose proprietary information to the public, unless required by law; however, VTA cannot guarantee that such information will be held confidential.

1. **Withdrawal of Proposals:** A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.
2. **Rights of VTA:** VTA may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence or qualifications to perform the Services described in this RFP.

VTA reserves the right to:

* Reject any or all Proposals.
* Issue subsequent Requests for Proposal.
* Postpone opening for its own convenience.
* Remedy technical errors in the Request for Proposal process.
* Approve or disapprove the use of particular subcontractors.
* Solicit best and final offers from all or some of the Proposers.
* Award a professional services contract to one or more Proposers.
* Waive informalities and irregularities in Proposals.
* Conduct interviews at its discretion.
* Accept other than the lowest offer.
* Negotiate with any, all or none of the Proposers.
1. **Contract Type:** It is anticipated that VTA will award a professional services contract (“Contract”). If awarded, the Contract will be Firm Fixed Price with a minimum term, subject to negotiation, of two (2) , three (3), or four (4) years, and include the corresponding number of one-year options to extend to yield a maximum potential contract term of seven (7) years; the MBCOC has sole discretion for exercising the one-year term extension options. Number of years in the Contract term will correspond to the same number of audit cycles, and the specific effective and/or ending date may be adjusted slightly to ensure the Contractor has adequate time to complete the audit for each fiscal year period. This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.
2. **Collusion:** By submitting a Proposal, each Proposer represents and warrants that its Proposal is genuine and not a sham, collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham Proposal or any other person to refrain from submitting a Proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a Proposal.
3. **Audit Report/Requirements:** Proposers must agree to abide by the requirements in Chapter III, paragraph 4 of FTA Circular 4220.1F. Every Proposer that has been the subject of any audit report by any government or public agency or qualified independent CPA must attach with its Proposal the latest such audit report, including direct labor, materials, fringe benefits and general overhead.

Proposers must also agree to submit cost or pricing data in accordance with 48 CFR Part 15.408 Table 15-2.

1. **Economic Interest Form 700:** The Proposer’s key person as well as other positions within his or her firm, determined by VTA**,** to be participating in the making of governmental decisions will each be required to file a Form 700 the financial disclosure form mandated by the California Fair Political Practices Commissions (FPPC). The Form 700 will be required to be filed upon execution of the Contract in which the VTA retains the services of the Proposer, annually thereafter, and upon separation of services pursuant to FPPC rules and regulations.
2. **INCORPORATION OF EXHIBITS AND ATTACHMENTS:** All exhibits, and attachments referenced in this RFP are incorporated herein by this reference.

# PROPOSER’S MINIMUM QUALIFICATIONS

1. **Required Minimum Qualifications:** The following qualifications are the minimum required qualifications that a Proposer must have in order for a Proposal to be considered:

1. Be a certified public accounting firm licensed to practice in the State of California.
2. Have comprehensive knowledge of current financial, compliance, and performance

 auditing best practices.

1. Have a demonstrated minimum of five (5) years of experience providing similar auditing services to public transportation or other governmental agencies comparable in size, responsibilities and complexity to VTA.
2. Must have demonstrated experience auditing within Generally Accepted Governmental Auditing Standards (“GAGAS”), issued by the Governmental Accountability Office (“GAO”).
3. Possess knowledge of regulations and codes regarding financial, compliance and internal auditing for a public transportation or other governmental agency.
4. Meet current GAGAS independence and continuing professional education (“CPE”) standards.
5. Have staffing capacity to assign to the engagement at least two (2) qualified, currently licensed CPAs, one (1) being an Audit Partner with a minimum of five (5) years of experience in performing and/or supervising governmental audits.

**B. STANDARDS OF WORK**

Proposers shall:

1. Provide a copy of their most recent peer review report and related rating on whether

 the system of quality control for the firm’s accounting and auditing practice has been

 suitably designed and complied with.

1. Meet specific qualifications requirements imposed by federal, state and local law, rules and regulations.
2. Perform audits in accordance with (1) GAGAS and (2) Statements on Auditing Standards issued by the American Institute of Certified Public Accountants. (“AICPA”).
3. Be thoroughly familiar with:
* Generally Accepted Government Auditing Standards issued by the GAO.
* Statements of Governmental Accounting Standards issued by the Governmental Accounting Standards Board (“GASB”).
* Compliance supplements issued by the Office of Management and Budget (“OMB”), Audits of States, Local Governments, and Non-Profit Organizations.
* Federal Transit Administration standards for reporting data in the Federal Funding Allocations Statistics Forms.
* Test of Compliance, as required by California Administrative Code Title 21.

# EVALUATION AND SELECTION

1. **Evaluation Criteria:** The following criteria will be used to evaluate Proposals:

|  |  |
| --- | --- |
| **Qualification of the Firm** | **25 Points** |
| **Staffing and Project Organization** | **25 Points** |
| **Work Plan / Project Understanding** | **25 Points** |
| **Local Firm Preference** | **10 Points** |
| **Cost Proposal** | **15 Points** |

1. **Qualification of the Firm:** Qualifications to be considered include but are not limited to: technical experience in performing work of a closely similar nature; experience working with transportation properties or other public agencies; record of completing work on schedule; strength and stability of the firm; technical experience and strength and stability of proposed subcontractors; and assessments by client references.
2. **Staffing and Project Organization:** Qualifications of project staff will be considered, particularly key personnel, and, especially, the project manager. Other factors to be considered include but are not limited to key personnel’s level of involvement in performing related work, logic of project organization; adequacy of labor commitment, and concurrence in the restrictions on changes in key personnel.
3. **Work Plan / Project Understanding:** Proposer’s demonstrated understanding of the project requirements, potential problem areas, project approach and work plan will be evaluated.
4. **Local Firm Preference:** Five (5) points shall be awarded if at least fifty percent (50%) of the dollar value of services to be rendered will be performed by a local firm. An additional point shall be awarded for each additional ten percent (10%) of the dollar value of services to be performed by a local firm, to a maximum point award of ten (10) points.
5. **Cost Proposal:** The reasonableness of the total price and competitiveness of this amount with other Proposals received; adequacy of data in support of figures quoted; reasonableness of individual task budgets; basis on which prices are quoted.
6. **Evaluation Procedure:** The review board will evaluate Proposals based on the pre-established criteria to determine the successful Proposer or establish a shortlist of firms to interview. VTA reserves the right to conduct interviews at its discretion.

Proposers are asked to keep the interview date stated in Section I, A Table 1 available in the event the review board conducts interviews. If invited to interview, VTA will notify Proposers regarding the schedule and other pertinent interview information. Typically, the interview is scheduled for forty-five (45) minutes.

Firms selected to participate in the oral interview process are required to have the audit partner and audit manager that would be assigned to this engagement present the Contractor’s proposal and address questions during the interview.

The names of the review board members are not revealed prior to the interviews. The individual or composite rating and evaluation forms prepared by individual review board members are not retained by VTA and will not be revealed.

**Basis of Award:** Award may be made on the basis of initial Proposals submitted without any negotiations or discussions.

This is a “best value” procurement based on procedures consistent with California public contract code section 20301(a). “Best value” is a selection process where the award is based on a combination of price and qualitative considerations.  A best value procurement requires tradeoffs between price and non-price factors to select the best overall value to VTA.

Subject to VTA’s right to reject any or all proposals, the Proposer whose Proposal is found to be most advantageous to VTA will be selected based upon consideration of the evaluation criteria.

Thus, VTA will make the award to the responsible Proposer whose Proposal is most advantageous to VTA.  Accordingly, VTA may not necessarily make an award to the Proposer with the highest technical ranking nor award to the proposer with the lowest price Proposal if doing so would not be in the overall best interest of VTA.

When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

Upon completion of a successful negotiation, VTA will issue a Notice of Recommended Award, which will initiate the five (5) day pre-award protest period pursuant to VTA’s protest policies.

1. PROPOSAL FORMAT AND CONTENT
2. **Format:** Proposals shall be typed, as concise as possible and shall not include any unnecessary promotional material. The nature and form of response are at the discretion of the Proposer but shall include the information listed below.
3. **Content:** The Proposer shall include the information described below:
4. **SAMPLE AUDIT REPORT:** Proposal must include a brief example (three (3) pages maximum) demonstrating how the Proposer would present its finding in its audit report. Actual data need not be used.
5. **Profile of Firm:** This section shall include a brief description of the firm’s size as well as the local organizational structure; it shall also include a discussion of the firm’s financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.
6. **Qualifications of the Firm:** This section shall include a brief description of the Proposer’s and subconsultants’ qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed. Proposer must provide the name, title, and phone number of three (3) clients to be contacted for references.
7. **Work Plan/Project Understanding:** By presentation of a well-conceived work plan, this section of the Proposal will demonstrate that the Proposer understands VTA’s objectives and work requirements and Proposer’s ability to satisfy those objectives and requirements. The work plan shall describe the work assigned to the prime and each subconsultant. The work plan shall also include a timetable for completing all work specified in the Scope of Work.
8. **Project Staffing:** This section shall discuss how the Proposer would propose to staff this project. Proposer’s project team members shall be identified by name, location, specific responsibilities on the project and the estimated person-hours of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
9. **Administrative Submittals:** The Proposer must complete all the forms attached hereto and submit in the Proposal.
10. BUSINESS DIVERSITY PROGRAM POLICY**:** Contractor shall adhere to VTA’s Business Diversity Program requirements.
11. **Minority and Women-Owned Business Enterprise POLICY AND REQUIREMENTS:** It is the policy of the Santa Clara Valley Transportation Authority to ensure that Minority and Women-Owned Business Enterprises (“MWBE”), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal. In this regard, Proposer will use its best efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontract work.

For more information on VTA’s Business Diversity Programs, please see website at [www.vta.org/osdb](http://www.vta.org/osdb) or call the Office of Business Diversity Programs at (408) 321-5962 for assistance inidentifying eligible MWBE firms. Listings of eligible firms are also available at the following:

<https://vta.sbdbe.com/FrontEnd/VendorSearchPublic.asp?TN=vta&XID=5635>

1. **SMALL BUSINESS ENTERPRISE POLICY AND REQUIREMENTS:** It is VTA policy to ensure that Small Business Enterprise (“SBE”) firms, as defined in Federal Regulations 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of contracts and subcontracts.
2. **SBE with No Set Goal Assignment:** VTAhas not established a contract specific SBE goal for this project. However, Proposer is encouraged to make every effort to meet VTA’s overall agency goal of 19% where possible. In this regard, Proposer will use its best efforts to ensure that SBE firms shall have an equitable opportunity to compete for subcontract work under this Contract. Any certified Disadvantaged Business Enterprise (“DBE”) is eligible to participate towards the SBE overall participation goal. SBE firms must be certified or accepted as certified by the VTA Office of Business Diversity Programs (“OBDP”).

Listings for SBE and DBE firms are:

VTA SBE Database:

* <http://www.VTA.org/about-us/doing-business-with-VTA-search-for-sbes>

California UCP DBE Database:

* <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>
1. **Consultant Registration:** All SBE DBE and MWBE firms listed on Form 5, Listing of MWBE Prime and Subcontractors and Form 6, Listing of SBE Prime and Subcontractors, must be certified by VTA’s OBDP, the California Unified Certification Program (“CUCP”), and/or accepted as certified by VTA’s OBDP at the time of the Proposal due date to be counted toward VTA’s 19% overall SBE goal. Proposers must comply with VTA's SBE Program Policy and Requirements on utilization of SBE.
2. Form 5, MWBE Listing of Prime and Subcontractors, Form 6, SBE Listing of Prime and Subcontractors, Form 7, Designation of Subcontractors and Suppliers, in compliance with SBE Program Policy and Requirements, must be submitted at time of Proposal submittal.
3. It is the Proposer’s sole responsibility to verify to VTA that a sub-consultant has an SBE/DBE certification.
4. **Contractor Reporting:** Proposer will be required to submit electronic quarterly DBE utilization reports to the VTA’s OBDP through our web-based online system (B2Gnow), accessed from any computer via the internet at the following website: [https://VTA.sbdbe.com](https://vta.sbdbe.com). The monthly reports will document payments to the prime and the prime will report payments made to their sub-contractors. At the end of this Contract, Contractor will be required to submit a Final DBE Utilization Report.

Each Contractor and sub-consultant will receive an email providing information with Log-On identification, password and instructions on how to use the system. Proposer agrees to submit any and all required electronic reports to the OBDP.

1. **Final DBE Submittal:** At the conclusion of this Contract, Contractor will be required to electronically submit a final DBE Utilization Report by indicating a final audit where requested in the B2Gnow system.
2. **Frauds And Fronts:** Contactors are cautioned against knowingly and willfully using “fronts” to meet the SBE goal of the Contract. The use of “fronts” or “pass through” subcontracts to non-disadvantaged firms constitutes a criminal violation.
3. INSURANCE REQUIREMENTS: Contractor shall adhere to the insurance requirements set forth in Exhibit A3. Proposer’s attention is directed to the insurance requirements in the exhibit. It is highly recommended that Proposers confer with their insurance carriers or brokers in advance of Proposal submission to determine the availability of insurance certificates and endorsements that will be required for the Contract awarded through this RFP.
4. PROTESTS
5. **Solicitation Phase:** Prior to the closing date for submittal of Proposal, Proposer may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications, or alleged restrictive specifications. Any such protests must be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of this solicitation may be extended pending a resolution of the protest.
6. **Pre-Award:** Protests dealing with alleged improprieties in the procurement or the procurement process that can only be apparent after the closing date for receipt of Proposals must be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests will contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA’s final decision prior to issuance of award.

Protestors shall have an opportunity to appear and be heard before the agency prior to the opening of Proposals in the case of protests based on the content of the request for Proposals or prior to final award in the case of protests based on other grounds. Proposer’s requests and protests shall be **in writing only** and be addressed to:

Santa Clara Valley Transportation Authority

Attn: Mary Talentinow, Acting Manager of Procurement, Contracts and Materials

Procurement, Contracts & Materials Management

3331 North First Street, Building A

San Jose, California 95134

The full text of VTA’s Policy No. 36 may be obtained at <http://www.vta.org/about-us/doing-business-with-vta-policies>. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

If this Contract is financed with federal assistance, pursuant to 2 C.F.R. § 200.318(k), protesters may raise, with the FTA, matters that are primarily a federal concern. Protesters must raise any federal matters arising out of VTA’s award of a contract within five (5) business days of VTA’s final decision of the Proposal protest. See 2 C.F.R. § 200.318(k) for details.

1. SCOPE OF SERVICES:

1. **General**

Based on VTA’s experience with similar endeavors, it is expected that this GAGAS-based compliance or performance audit process will normally commence in December or January following completion of the subject fiscal year. Completion of the audit and presentation of the audit report to the MBCOC is projected to normally take between four (4) and six (6) months from inception to Committee acceptance.

The audit partner and manager for the engagement from the selected compliance audit firm will attend a minimum of two (2) MBCOC meetings to plan and coordinate the audit as well as to present the audit report.

1. **Specific Scope**

 The Services will include, but may not be limited to, the following:

1. Conduct an annual compliance and/or performance audit of Program revenues and expenditures to render an auditor’s opinion on whether expenditures during the subject period were spent in conformance with Ballot requirements. Compliance and/or performance audit must adhere to GAGAS standards.
2. Audit will cover the most recently completed fiscal year (July 1 – June 30). Subject to Contractor’s recommendation and the Committee’s approval, the audit for the initial years of the Program may be performed concurrently and reported in one comprehensive audit report.
3. Audit partner must attend a specified MBCOC meeting each year to present, in overview, their proposed audit plan for that cycle, and to coordinate with the Committee on the specific audit plan, schedule and deliverables for that cycle while also addressing any questions or concerns of the Committee. The Committee and Contractor will come to mutual agreement on the specific MBCOC meeting each year (audit cycle) to accomplish this.
4. After reaching agreement with the Committee on the overall schedule for that specific audit process but prior to initiating fieldwork, Contractor must coordinate with VTA on the specific schedule for conducting fieldwork. Fieldwork for similar audit processes has normally been initiated during December or January.
5. Monitor and report Measure B: (A) revenue received; (B) income earned; and (C) expenditures by Program category, denoting any change to the Program categories and/or maximum approved allocations therein.
6. Monitor and report as separate expenditure categories: (A) administrative costs; and (B) debt service and/or costs of borrowing.
7. Conduct an exit meeting with relevant stakeholders following completion of fieldwork to review preliminary issues and obtain further information and clarifications as necessary.
8. Prepare and present a written report on the findings and auditor’s opinion. To promote efficiency and help ensure optimal presentation for both the Committee and the public, the draft of this document must be submitted to VTA for initial review, comment, and/or suggested clarification prior to formal submission and presentation to the MBCOC.
9. Following VTA review, Contractor must incorporate any changes it determines warranted, finalize the draft, and electronically submit the file to VTA in PDF format within fourteen (14) calendar days for inclusion in the agenda packet for the next MBCOC meeting.
10. Contractor’s audit partner and engagement manager for this Contract must present the audit report to the MBCOC and address any questions or concerns, either verbally at the meeting or, if necessary, in a subsequent follow-up written correspondence (including email). Presentation of the audit report will occur at the MBCOC meeting per the schedule agreed upon between the Contractor and Committee.
11. Following presentation of the audit report and incorporation of any requested or needed adjustments, Contractor must provide to VTA, in PDF format and within fourteen (14) calendar days from MBCOC acceptance of the report, the electronic file of the final formatted audit report. The audit report will be posted to VTA’s website and, if the Committee so determines, be used in part to help fulfil its ballot-defined responsibility to inform the Santa Clara County residents on how the Funds were spent during the subject period.
12. Contractor will also be required, at the Committee’s discretion and within fourteen (14) calendar days following Committee acceptance of the document, to provide up to one hundred (100) bound color copies of the audit report for public distribution.
13. As determined by the MBCOC, audit partner and/or engagement manager will present the audit report in-person to the VTA Board of Directors and/or its Governance & Audit Committee, highlighting in summary fashion the findings and auditor’s opinion. The schedule for this action, which would be required only due to special circumstances, would be determined by the MBCOC and the VTA Board Secretary.
14. Monitor, evaluate, and report on specific areas or items or provide specific metrics requested by the Committee, examples of which may potentially include administrative or debt service costs for the Program, expenditure limits, etc.
15. **Other Requirements**
16. Contractor must provide working papers in electronic format to VTA’s contracted financial auditor and/or Auditor General’s Office covering the results of the Measure B compliance audit.
17. The MBCOC may bring to the Contractor’s attention at any time items of potential concern that come to the Committee’s attention and request that the Contractor provide specific focus and/or special testing.
18. At the MBCOC’s discretion, Contractor must include as supplementary information or as an appendix to the audit report the pre-formatted Program project summary pages provided by VTA. These summaries, which will include photographs, schematics, and/or other visual aids, may be determined by the MBCOC to be beneficial in enhancing the presentation and reader understanding of the Program and its component programs and projects.
19. The final version (not drafts or working papers) of the audit reports are included in MBCOC agenda packets, are reviewed in open session at public meetings, and thus become a matter of public record.

# ADMINISTRATIVE SUBMITTALS

**Proposer must submit all forms and as part of the Proposal.**

FORM 1. GENERAL INFORMATION

FORM 2. LEVINE ACT STATEMENT

FORM 3. EXCEPTIONS TO THE CONTRACT

FORM 4. COST PROPOSAL FORM

FORM 5. LISTING OF MWBE PRIME AND SUBCONTRACTORS

FORM 6. LISTING OF SBE PRIME AND SUBCONTRACTORS

FORM 7. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS

**FORM 8.** LOCAL FIRM CERTIFICATION

## GENERAL INFORMATION

*Instructions: Please complete this form and include in your Proposal. On a separate page, list all subconsultants; include company name, address, phone number and type of service.*

|  |  |
| --- | --- |
| Company Name |  |
| Street Address |  |
| City/State/Zip |  |
| Phone No. |  | DIR No. |  |
| DUNS No. |  | CAGE No.\* |  |
| Federal Taxpayer ID No. |  | NAICS Codes |  |
|  \*Commercial and Government Entity ([www.sam.gov](http://www.sam.gov)) |
| POINT(S) OF CONTACT |
| **Primary** |
| Name/Title |  |  |
| Phone No. |  |  |
| Cell Phone No. |  |  |
| E-mail |  |  |
|  |  |  |  |
|  |  |
| **Alternate** |
| Name/Title |  |  |
| Phone No. |  |  |
| Cell Phone No. |  |  |
| E-mail |  |  |
|  |  |  |
|  |  |
| AUTHORIZED SIGNATORIES: |
| **Primary** |
| Name/Title |  |  |
| Signature |  |  |
| E-mail |  |  |
|  |  |  |
|  |  |
| **Alternate** |
| Name/Title |  |  |
| Signature |  |  |
| E-mail |  |  |
|  |  |  |

## LEVINE ACT STATEMENT

Prime Proposer and Subconsultants must submit a signed Levine Act Statement

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an elected or appointed officer, or alternate, of a local government agency from participating in the award of a contract if he or she receives any contributions totaling more than $250 in the twelve (12) months preceding the pendency of the contract award, and for three (3) months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for elective office or on behalf of any committee in federal, state or local elections.

VTA’s [Board members](http://www.vta.org/Get-Involved/Board-of-Directors) and their alternates as of the date of this RFP are as follows:

|  |  |  |
| --- | --- | --- |
| **Name** | **Title** | **Represents** |
| Cindy Chavez | Chairperson | County of Santa Clara |
| Glenn Hendricks | Vice Chairperson | City of Sunnyvale |
| Magdalena Carrasco | VTA Board Member | City of San Jose |
| Charles "Chappie" Jones | VTA Board Member | City of San Jose |
| Lan Diep | VTA Board Member | City of San Jose |
| Sam Liccardo | VTA Board Member | City of San Jose |
| Raul Peralez | VTA Board Member | City of San Jose |
| Devora "Dev" Davis | VTA Alternate Board Member | City of San Jose |
| John McAlister | VTA Board Member | City of Mountain View |
| Adrian Fine | VTA Alternate Board Member | City of Palo Alto |
| Rob Rennie | VTA Board Member | Town of Los Gatos |
| Howard Miller | VTA Alternate Board Member | City of Saratoga |
| Larry Carr | VTA Board Member | City of Morgan Hill |
| Marie Blankley | VTA Alternate Board Member | City of Gilroy |
| Bob Nuñez | VTA Board Member | City of Milpitas |
| Teresa O’Neill | VTA Alternate Board Member | City of Santa Clara |
| Dave Cortese | VTA Board Member | County of Santa Clara |
| Susan Ellenberg | VTA Alternate Board Member | County of Santa Clara |
| Jeannie Bruins | Ex-Officio Member | Metropolitan Transportation Commission |

1. Have you or your company, or any agent on behalf of you or your company, made any contributions of more than $250 to any VTA Board member or alternate in the twelve (12) months preceding the date of the issuance of this RFP?

No \_\_\_ Yes \_\_\_ Please identify the Board member or alternate:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any contributions of more than $250 to any VTA Board member or alternate in the three months following the award of the contract?

No \_\_\_ Yes \_\_\_ Please identify the Board member or alternate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Answering yes to either of the two questions above does not preclude VTA from awarding a contract to your firm. It does, however, preclude the identified Board member or alternate from participating in the contract award process for this contract.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature: |  | Firm Name: |  | Date: |

## EXCEPTIONS TO THE CONTRACT

This form shall include any exceptions the Proposer takes to the Contract, which includes the “Compensation, Invoicing and Payment” and “Indemnity and Defense of Claims” and “Insurance Requirements.” If Proposer takes no exceptions, check the field “Proposer takes no exceptions” below.

All exceptions to the Contract terms and conditions must be stated on this form and submitted with the Proposal. Proposer’s failure to take timely exception to VTA’s terms and conditions expressly waives Proposer’s right to challenge or request modification of such terms and conditions and is conclusive evidence of Proposer’s assent thereto.

🞏 Proposer takes exception to the following:

|  |  |  |
| --- | --- | --- |
| Section Reference |  | Disposition **(For VTA Use Only)** |
| \*Insert proposed changes here |
| Section Reference |  | Disposition **(For VTA Use Only)** |
| \*Insert proposed changes here |

\*Make copies of this page if necessary

🞏 “Proposer takes no exceptions”

|  |
| --- |
|  |
| Firm Name: |
|  |
| Name | Title |
|  |
| Signature | Date |

## COST PROPOSAL FORM – Two Year Base Term

|  |
| --- |
|  |
| Proposer: |  |
| **DETAIL DESCRIPTION OF COST ELEMENTS** |
| **LABOR (Specify Classification or Task)** | **ESTIMATED HOURS (ANNUALLY)** | **HOURLY BILLING RATE** | **TOTAL ESTIMATED ANNUAL COST** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **ANNUAL TOTAL**  | **$** |
| **MINIMUM BASE CONTRACT TERM (2-YEARS)** | X 2 |
| 1. **PROPOSAL BASE PRICE**
 | **$** |
| **OPTION YEARS** |
| **OPTION YEAR 1 (AT BASE AMOUNT OR \_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 2 (AT BASE AMOUNT OR \_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 3 (AT BASE AMOUNT OR \_\_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 4 (AT \_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 5 (AT \_\_\_\_\_\_% INCREASE\*)** | **$** |
| 1. **OPTION YEARS TOTAL**
 | **$** |
| **PROPOSAL TOTAL** |
| **TOTAL NUMBER OF PROPOSAL YEARS (Minimum 2, Maximum 7)** |  |
| **PROPOSAL BASE AMOUNT** | **$** |
| **OPTION YEARS TOTAL** | **$** |
| **PROPOSAL TOTAL (A + B)**  | **$** |

|  |
| --- |
| Firm Name: |
|  |
| Name | Title |
| Signature |

## FORM 4 COST PROPOSAL FORM – Four Year Base Term

|  |
| --- |
|  |
| Proposer: |  |
| **DETAIL DESCRIPTION OF COST ELEMENTS** |
| **LABOR (Specify Classification or Task)** | **ESTIMATED HOURS (ANNUALLY)** | **HOURLY BILLING RATE** | **TOTAL ESTIMATED ANNUAL COST** |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| **ANNUAL TOTAL**  | **$** |
| **MINIMUM BASE CONTRACT TERM (4-YEARS)** | X 4  |
| 1. **PROPOSAL BASE PRICE**
 | **$** |
| **OPTION YEARS** |
| **OPTION YEAR 1 (AT BASE AMOUNT OR \_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 2 (AT BASE AMOUNT OR \_\_\_\_\_\_% INCREASE\*)** | **$** |
| **OPTION YEAR 3 (AT BASE AMOUNT OR \_\_\_\_\_\_\_% INCREASE\*)** | **$** |
| 1. **OPTION YEARS TOTAL**
 | **$** |
| **PROPOSAL TOTAL** |
| **TOTAL NUMBER OF PROPOSAL YEARS (Minimum 4, Maximum 7)** |  |
| **PROPOSAL BASE AMOUNT** | **$** |
| **OPTION YEARS TOTAL** | **$** |
| **PROPOSAL TOTAL (A + B)**  | **$** |

|  |
| --- |
| Firm Name: |
|  |
| Name | Title |
| Signature |

## LISTING OF MWBE PRIME AND SUBCONTRACTORS

|  |  |  |  |
| --- | --- | --- | --- |
| Firm (Prime): |  | Phone: |  |
| MWBE: | 🞏 Yes | 🞏 No | Age of Firm |  |
| Address: |  | Name & Title: |  |
| City, State, Zip: |  | Signature/ Date |  |

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

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

**CREDIT FOR MWBE** **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 MWBE to non-MWBE firms, towards the MWBE goal.

***A MWBE must be certified or accepted as Certified by*** VTA***.*** Refer to 49CFR Part 26.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name & Address of Certified DBE** | **Certification Number** | **Agency Certifying** | **Age of Firm** | **Dollar Value Of Contract** |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |
| 4. |  |  |  |  |
| 5. |  |  |  |  |

|  |
| --- |
| **Description of Work** |
| 1. |
| 2. |
| 3. |
| 4. |
| 5. |

MWBE GOALS ARE DETERMINED ON BASE PROPOSAL AMOUNT:

|  |  |  |
| --- | --- | --- |
| Total Contract Amount |  | $ |
| MWBE Contract Amount |  | $ |
|  |  |  |
| MWBE Contract Amount | MWBE Goal Achieved | MWBE Contract Goal |

## LISTING OF SBE PRIME AND SUBCONTRACTORS

|  |  |  |  |
| --- | --- | --- | --- |
| Firm (Prime): |  | Phone: |  |
| SBE: | 🞏 Yes | 🞏 No | Age of Firm |  |
| Address: |  | Name & Title: |  |
| City, State, Zip: |  | Signature/ Date |  |

***Contract dollar value must exclude work performed by non-***SBE ***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 an 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.

***An SBE must be certified or accepted as Certified by*** VTA***.*** Refer to 49CFR Part 26.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **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 | % |  | % |

## DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS

**FOR**

**DATA COLLECTION REQUIREMENTS**

|  |  |
| --- | --- |
| Proposer: |  |

Proposer shall completely fill in the form below for each proposed subcontract for all subcontractors, suppliers of materials, subconsultants. Include all firms, regardless of ethnicity, gender or SBE or DBE status. Some information, such as ethnicity and gender is for information purposes only.

*This form is to be completed and submitted with your Proposal.*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Firm Name** | **City and State** | **Portion of Work or Proposed Item** | **Ethnicity\*** | **Gender+** | **Estimated Dollar Amount of Subcontract** |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |

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

|  |  |
| --- | --- |
| **+**F=Female | **+**M=Male |

|  |  |  |
| --- | --- | --- |
| Total Proposed Amount: |  | $ |
| Amount to be subcontracted: |  | $ |
| Percent to be subcontracted: |  | % |

## LOCAL FIRM CERTIFICATION

1. The Proposer hereby certifies that it is \_\_\_ / is not \_\_\_ a local firm. A local firm is a firm that currently has its main office or a branch office with meaningful production capability located within Santa Clara County, or a firm that, upon award of the contract by VTA, will establish such a local office.

|  |  |
| --- | --- |
| If a local firm, specify local address: |  |
|  |  |
|  |  |

1. The Proposer hereby certifies that \_\_\_\_\_\_\_% of the dollar value of services to be rendered will be performed by the following local firms (including Proposer, if applicable):

|  |  |  |
| --- | --- | --- |
| Name of Proposer or Subcontractor |  | % of Dollar Value |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

1. The above-listed subcontractors are local firms as defined in paragraph 1 above, and are located at the following local addresses:

|  |  |  |
| --- | --- | --- |
| Subcontractor Name |  | Address |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

|  |
| --- |
|  |
| Firm Name: |
|  |
| Name | Title |
|  |
| Signature | Date |

# EXHIBITS

EXHIBIT A SAMPLE CONTRACT

EXHIBIT A1 SCOPE OF SERVICES

EXHIBIT A2 COMPENSATION, INVOICING AND PAYMENT

EXHIBIT A3 INSURANCE REQUIREMENTS

EXHIBIT A4 SMALL BUSINESS ENTERPRISE REQUIREMENTS

### CONTRACT

BETWEEN

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

AND

CONTNAME

FOR

[SERVICES]

CONTRACT NO. S20022

This Contract for professional services (“Contract”) is entered into between the Santa Clara Valley Transportation Authority (“VTA”) and (“Contractor”).

1. **SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor, and materials to perform the services described in Exhibit A1 (herein referred to as “Services”).
2. **TERM OF THIS CONTRACT:** The term of this Contract shall commence on the Effective Date (as defined in the signature block below) and continue through Month, Day, Year (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein).
3. **DAYS**: For purposes of this Contract, all references herein to “day” shall mean calendar day, unless specified otherwise. All references to “calendar day” shall mean any day, including Saturday, Sunday and all legal holidays. All references to “working day” or “business day” shall mean any business day, excluding Saturdays, Sundays and legal holidays.
4. **COMPENSATION:** Contractor shall be paid in accordance with Exhibit A2 for the Services.

Total compensation for the Services provided hereunder shall not exceed $.00.

1. **Performance of the Services:**
2. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.
3. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor’s expense, to re-perform any Services that fail to meet the above standards.
4. **Assignment and Subcontracts:**
5. Contractor shall not assign or transfer this Contract or any portion thereof without the prior written consent of VTA. Additionally, Contractor shall not subcontract any part of its Services other than to those subcontractors that may be identified herein. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.
6. Contractor shall be fully responsible and liable for the Services, products and actions of all subcontractors and suppliers of any tier, and shall include in each subcontract any provisions necessary to make all the terms and conditions of this Contract fully effective.
7. **Changes:** By written notice from VTA’s Authorized Representative (as defined in Section L.1), VTA may, from time to time, order work suspension or make changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor’s cost to perform the Service or in the time required for its performance, Contractor shall promptly notify VTA thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated.
8. **Audit and Records:**
9. Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for the Services. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges. Such documentation shall be sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.
10. For the duration of this Contract, and for a period of three (3) years thereafter, VTA, its representatives and the state auditor shall have the right to examine and audit during Contractor’s normal business hours the books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.
11. Contractor shall report indirect costs in accordance with the cost principles contained in 48 CFR Part 31, and follow the uniform administrative requirements set forth in 2 CFR Part 200, as modified by 2 CFR Part 1201.
12. The provisions of this AUDIT AND RECORDS section shall be included in any subcontracts hereunder.
13. **Prohibited Interests:**
14. **Solicitation:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.
15. **Interest of Public Officials:** No Board Member, officer or employee of the VTA during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
16. **Interest of the Contractor:** The Contractor covenants that, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.
17. **Termination and Suspension:**
18. VTA may, by giving at least ten (10) business days’ written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA’s convenience. Contractor shall be compensated (i) in accordance with the terms of this Contract for the Services satisfactorily performed prior to the effective date and time of termination or suspension, or (ii) the minimum dollar amount stated herein, whichever is applicable. Contractor shall have no right to recover lost profits on the balance of the Services.
19. VTA, by written notice given to Contractor, may declare default in Contractor’s performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within two (2) business days of receipt of the notice, setting forth a reasonable proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.
20. In the event of such termination for cause, VTA shall be relieved of any obligation of further payment to Contractor, including its obligation to procure the minimum dollar amount stated herein (if any), and may complete the remainder of the Services by itself, or by using an alternative, third party contractor. The additional cost to VTA for completing the Services shall be deducted from any sum due to the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to VTA.
21. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of VTA.
22. **General Provisions:**
23. **Ownership of Data:** All drawings, specifications, reports and other data developed by Contractor, its assigned employees or subcontractors pursuant to this Contract shall become the property of VTA as prepared, whether delivered to VTA or not. Unless otherwise provided herein, all such data shall be delivered to VTA or its designee upon completion of this Contract or at such other times as VTA or its designee may request.
24. **Civil Rights:**
25. **Nondiscrimination:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.
26. **ADA Accessible Information and Communications:** Any and all deliverables provided by Contractor to VTA pursuant to the Contract must be prepared and delivered in a format that is accessible to individuals with disabilities, as required by (i) the American with Disabilities Act of 1990 (ADA); (ii) 28 CFR Parts 35 and 36; (iii) 49 CFR Part 37; (iv) Section 504 of the Rehabilitation Act of 1973, as amended; and (v) California’s Unruh Civil Rights Act.
27. **Governing Law:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.
28. **Forum Selection:** Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California.  Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
29. **Confidentiality and Disclosure:** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that the Contractor obtains from VTA or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by Contractor in the performance of this Contract (“**Confidential Information**”). In addition, Contractor must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, Contractor may disclose Confidential Information to third parties or use such information for purposes other than performance of the Services if: (1) VTA provides express written consent for such use or disclosure; (2) the information is known to Contractor prior to obtaining such information from VTA or performing Services under this Contract; (3) the information is, at the time of disclosure by Contractor, then in the public domain; (4) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. In addition, Contractor may disclose Confidential Information if required to do so by court order. However, upon receipt of an order requiring such disclosure, Contractor must inform VTA as soon as practicable in order to allow VTA to challenge such order if it determines that such challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.
30. **Nonwaiver:** Failure of VTA to insist upon strict performance of any terms or conditions of this Contract or failure or delay in exercising any rights or remedies provided herein or by law or its failure to properly notify Contractor in the event of breach or its acceptance of or payment for any Services hereunder shall not release Contractor from the representations or obligations of this Contract and will not be deemed a waiver of any right of VTA to insist upon strict performance hereof or any of its rights or remedies hereunder.
31. **Severability:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
32. **Independent Contractor:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
33. **Entire Contract:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written.
34. **Amendment:** Except as expressly provided herein, the provisions of this Contract cannot be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
35. **Compliance with Applicable Law:** In the performance of the Services, Contractor and its subcontractors shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
36. **Documents and Written Reports:** In accordance with Government Code § 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the document or written report if the total cost of the work performed by nonemployees of the agency exceeds five thousand dollars ($5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.
37. **Incorporation Of Exhibits And Attachments:** All exhibits and attachments referenced in this Contract are incorporated herein by this reference.
38. **Authorized Representatives and PointS of Contact:** The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.
39. **Authorized Representatives:**

|  |
| --- |
| **VTA:** |
| Mary Talentinow, Acting Manager of Procurement and Contracts |
| 3331 N. First Street, Bldg. A |
| San Jose, CA 95134-1927 |
| Mary.talentinow@vta.org  |

|  |
| --- |
| **Contractor:** |

1. **Notices:** Notices shall be in writing and addressed to the Authorized Representatives at the addresses set forth above.
2. **Points of Contact:** The Points of Contact listed below are authorized to communicate regarding contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

|  |
| --- |
| **VTA:** |
| Carolyn Vargas, Contracts Administrator |
| 3331 N. First Street, Bldg. A |
| San Jose, CA 95134-1927 |
| carolyn.vargas@vta.org |

|  |
| --- |
| **Contractor:** |

1. Written notification to the other Party shall be provided, in advance, for changes in the name or address of the designated Authorized Representatives or Points of Contact stated above
2. **Insurance:** Contractor shall adhere to the insurance requirements set forth in Exhibit A3.
3. **Indemnity and Defense of Claims:**
4. Contractor must indemnify and hold harmless VTA, any public agencies within whose jurisdiction, on whose behalf, or on whose property the Services are being performed, any party VTA is contractually obligated to identify in this Contract as an indemnitee, and each of their respective Board of Directors, Board of Supervisors, Councils, individual board members, officers, agents, employees, and consultants (each, an “Indemnitee”; collectively, the “Indemnitees”) from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, or fees and costs (including attorneys’ and experts’ fees and costs) (each a “Claim” and collectively “Claims”) arising out of, pertaining to, caused by, or in any way relating to the work performed under this Contract, including compliance or non-compliance with the terms of this Contract, by Contractor and/or its agents, employees, or subcontractors, whether such Claims are based upon a contract, personal injury, death, property damage, or any other legal or equitable theory whatsoever.
5. Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth above in subparagraph (1) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors, was, in fact, liable.  In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA.
6. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.
7. **Business diversity PROGRAM REQUIREMENTS:** Contractor shall adhere to the Small Business Enterprise requirements set forth in Exhibit A4.

In witness whereof, VTA and Contractor have executed this Contract as of the last date set forth below (“Effective Date”).

[AUTHORIZED SIGNATORIES]

EXHIBIT A1 SCOPE OF SERVICES

1. **General**

Based on VTA’s experience with similar endeavors, it is expected that this GAGAS-based compliance or performance audit process will normally commence in December or January following completion of the subject fiscal year. Completion of the audit and presentation of the audit report to the MBCOC is projected to normally take between four (4) and six (6) months from inception to Committee acceptance.

The audit partner and manager for the engagement from the selected compliance audit firm will attend a minimum of two (2) MBCOC meetings to plan and coordinate the audit as well as to present the audit report.

1. **Specific Scope**

 The Services will include, but may not be limited to, the following:

1. Conduct an annual compliance and/or performance audit of Program revenues and expenditures to render an auditor’s opinion on whether expenditures during the subject period were spent in conformance with Ballot requirements. Compliance and/or performance audit must adhere to GAGAS standards.
2. Audit will cover the most recently completed fiscal year (July 1 – June 30). Subject to Contractor’s recommendation and the Committee’s approval, the audit for the initial years of the Program may be performed concurrently and reported in one comprehensive audit report.
3. Audit partner must attend a specified MBCOC meeting each year to present, in overview, their proposed audit plan for that cycle, and to coordinate with the Committee on the specific audit plan, schedule and deliverables for that cycle while also addressing any questions or concerns of the Committee. The Committee and Contractor will come to mutual agreement on the specific MBCOC meeting each year (audit cycle) to accomplish this.
4. After reaching agreement with the Committee on the overall schedule for that specific audit process but prior to initiating fieldwork, Contractor must coordinate with VTA on the specific schedule for conducting fieldwork. Fieldwork for similar audit processes has normally been initiated during December or January.
5. Monitor and report Measure B: (A) revenue received; (B) income earned; and (C) expenditures by Program category, denoting any change to the Program categories and/or maximum approved allocations therein.
6. Monitor and report as separate expenditure categories: (A) administrative costs; and (B) debt service and/or costs of borrowing.
7. Conduct an exit meeting with relevant stakeholders following completion of fieldwork to review preliminary issues and obtain further information and clarifications as necessary.
8. Prepare and present a written report on the findings and auditor’s opinion. To promote efficiency and help ensure optimal presentation for both the Committee and the public, the draft of this document must be submitted to VTA for initial review, comment, and/or suggested clarification prior to formal submission and presentation to the MBCOC.
9. Following VTA review, Contractor must incorporate any changes it determines warranted, finalize the draft, and electronically submit the file to VTA in PDF format within fourteen (14) calendar days for inclusion in the agenda packet for the next MBCOC meeting.
10. Contractor’s audit partner and engagement manager for this Contract must present the audit report to the MBCOC and address any questions or concerns, either verbally at the meeting or, if necessary, in a subsequent follow-up written correspondence (including email). Presentation of the audit report will occur at the MBCOC meeting per the schedule agreed upon between the Contractor and Committee.
11. Following presentation of the audit report and incorporation of any requested or needed adjustments, Contractor must provide to VTA, in PDF format and within fourteen (14) calendar days from MBCOC acceptance of the report, the electronic file of the final formatted audit report. The audit report will be posted to VTA’s website and, if the Committee so determines, be used in part to help fulfil its ballot-defined responsibility to inform the Santa Clara County residents on how the Funds were spent during the subject period.
12. Contractor will also be required, at the Committee’s discretion and within fourteen (14) calendar days following Committee acceptance of the document, to provide up to one hundred (100) bound color copies of the audit report for public distribution.
13. As determined by the MBCOC, audit partner and/or engagement manager will present the audit report in-person to the VTA Board of Directors and/or its Governance & Audit Committee, highlighting in summary fashion the findings and auditor’s opinion. The schedule for this action, which would be required only due to special circumstances, would be determined by the MBCOC and the VTA Board Secretary.
14. Monitor, evaluate, and report on specific areas or items or provide specific metrics requested by the Committee, examples of which may potentially include administrative or debt service costs for the Program, expenditure limits, etc.
15. **Other Requirements**
16. Contractor must provide working papers in electronic format to VTA’s contracted financial auditor and/or Auditor General’s Office covering the results of the Measure B compliance audit.
17. The MBCOC may bring to the Contractor’s attention at any time items of potential concern that come to the Committee’s attention and request that the Contractor provide specific focus and/or special testing.
18. At the MBCOC’s discretion, Contractor must include as supplementary information or as an appendix to the audit report the pre-formatted Program project summary pages provided by VTA. These summaries, which will include photographs, schematics, and/or other visual aids, may be determined by the MBCOC to be beneficial in enhancing the presentation and reader understanding of the Program and its component programs and projects.
19. The final version (not drafts or working papers) of the audit reports are included in MBCOC agenda packets, are reviewed in open session at public meetings, and thus become a matter of public record.

### EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT

FIRM-FIXED PRICE

1. **COMPENSATION:** This is a firm-fixed price Contract with a maximum value of $.00, (“Total Compensation Amount”), for which amount Contractor agrees to complete the Services defined in this Contract. The Total Compensation Amount includes Contractor’s total direct costs, indirect costs, and profit. No additional compensation will be paid without a written amendment to this Contract.
2. **INVOICING:** Contractor shall invoice VTA on a monthly basis for partial payments corresponding to the percentage of work actually completed by Contractor.
3. **Progress Payments:** The percentage of the Services completed shall be documented in a monthly progress report prepared by Contractor. Contractor shall also furnish such other information, as may be requested by VTA, to substantiate the validity of an invoice. At its sole discretion, VTA may decline to make full payment for any portion of the Services until such time as Contractor has documented, to VTA’s satisfaction, that Contractor has fully completed all of the portion of the Services billed for in the invoice. VTA’s payment in full for any portion of the Services shall not constitute VTA’s final acceptance of any or all of Contractor’s work.
4. **Invoice Format:** VTA shall pay Contractor on the basis of invoices submitted every month for that portion of the Services performed during the preceding month. Invoices shall be in a form acceptable to VTA and each invoice must include:
* Contract Number.
* Description of that portion of the Services performed.
* Percentage of Services completed.
* Total costs.
1. **Invoice Submittal:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.

Email: VTAAccountsPayable@vta.org

1. Should VTA contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. VTA may, at any time, conduct an audit of any and all records kept by Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor’s future invoices and any retention funds.
2. **PROMPT PAYMENT:** VTA will pay Contractor within thirty (30) days after receipt by VTA of a proper, fully documented, invoice. Contractor shall pay subcontractors for satisfactory performance of any of the Services performed by subcontractors within fifteen (15) days of receipt of payment by VTA for such Services. Contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor’s work is satisfactorily completed.

### EXHIBIT A3 INSURANCE REQUIREMENTS

**CONTRACTOR’S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CONTRACTOR CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.**

**INSURANCE**

Without limiting Contractor’s obligation to indemnify and hold harmless VTA, Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in Contract price. In the event of any material change in the Contract Scope of Services, VTA reserves the right to change the insurance requirements set forth herein. Contractor must furnish complete copies of all insurance policies, within three (3) business days of any request for such by VTA.

**A. Liability and Workers’ Compensation Insurance**

**1. Minimum Scope of Coverage**

Coverage must be at least as broad as:

a. Insurance Services Office General Liability coverage (“occurrence” form CG 0001). General Liability insurance written on a “claims made” basis is not acceptable.

b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 “any auto.” Auto Liability written on a “claims-made” basis is not acceptable.

c. Workers’ Compensation insurance as required by the Labor Code of the State of California, and Employer’s Liability insurance.

1. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor’s services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a “claims made” basis, if so, please see special provisions in Section B.

**2. Minimum Limits of Insurance**

 Contractor must maintain limits no less than:

a. General Liability (including Umbrella/Excess insurance): $2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability insurance with Excess or Umbrella policies, but in no event may the General Liability primary policy limit per occurrence be less than $2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, “Follow Form” coverage, and a “Drop Down”.

b. Automobile Liability $1,000,000 limit per accident for bodily injury and property damage.

c. Workers’ Compensation and Employer’s Liability: Statutory Workers’ Compensation limits and Employer’s Liability limits of $1,000,000 per accident.

d. Professional Liability: $2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability insurance with Excess or Umbrella policies, but in no event may the Professional Liability primary policy limit per occurrence be less than $2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying policy, “Follow Form” coverage, and a “Drop Down” provision.

**3. Self-Insured Retention**

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of $50,000 ($100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of $50,000, Contractor must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess Contractor’s ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require Contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by Contractor. Contractor may request execution of a nondisclosure agreement prior to submission of financial reports.

**B. Claims Made Provisions (not applicable to General Liability or Automobile Liability)**

 Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy must be in effect as of the date of this Contract and the retroactive date must be no later than the date of this Contract.

2. If any policy is not renewed or the retroactive date of such policy is to be changed, Contractor must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.

3. No prior acts exclusion may be added to the policy during the contract period.

4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

**C. Other Provisions**

The policies must contain, or be endorsed to contain, the following provisions:

**1. General Liability and Automobile Liability**

a. VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor, including VTA’s general supervision of Contractor; products and completed operations of Contractor and its subcontractors; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.

c. Contractor’s insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

d. The General Liability General Aggregate limit must apply per project, not per policy.

**2.** **All Coverages**

1. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by Contractor and its subcontractors for VTA.
2. Contractor’s insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to Contractor’s insurance. Contractor’s insurance must not seek contribution from VTA’s insurance program.

3. Other Insurance Provisions

a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention

1. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the rights to require Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

# D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best’s rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

# E. Certificates of Insurance

Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. The contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the SIRs/deductibles or lack thereof and the policy term, (2) include copies of all the actual policy endorsements required herewith, and (3) in the “Certificate Holder” box include:

Santa Clara Valley Transportation Authority (“VTA”)

3331 North First Street

San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If Contractor receives notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, Contractor must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

**F. Maintenance of Insurance**

If Contractor fails to maintain insurance as required herein, VTA, at its option, may suspend payment for work performed and/or may order Contractor to suspend work at Contractor’s expense until a new policy of insurance is in effect.

Ed. Rev. 10-1-19

### EXHIBIT A4 SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

1. **MWBE POLICY:**
2. It is the policy of VTA to ensure that Minority and Women Owned Business Enterprises (MWBEs), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal.
3. Contractor will use all reasonable efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontracting work under this Contract.
4. **SMALL BUSINESS ENTERPRISES:**
5. It is VTA policy to ensure that Small Business Enterprise (SBE) firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of contracts and subcontracts.
6. In connection with its performance under this Contract, although there is no specified SBE goal, Contractor agrees to cooperate with VTA in attempting to meet VTA’s overall 19% annual utilization of SBE firms. In this regard Contractor will use all reasonable efforts to ensure that SBE firms shall have an equitable opportunity to compete for subcontract work under this Contract.

1. VTA will monitor compliance with Contract requirements for SBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sbdbe.com>. Contractor will be notified via e-mail with instructions on how to utilize the system.
2. Contractor will be required to submit monthly SBE utilization reports electronically to the VTA Office of Business Diversity Programs. These reports will be submitted electronically by the Contractor and will document when payments are made to subcontractors and SBE firms.
3. At the conclusion of this Contract, Contractor shall submit a final SBE utilization report electronically to the VTA Office of Business Diversity Programs at: OBDP@VTA.org by indicating a final audit where requested in the B2Gnow system.