

Request for Proposals
RFP S20130

Compliance Audit Services for the 2000 Measure A Citizens Watchdog Committee

September 3, 2020
Norman David, Contracts Administrator

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INTRODUCTION: The Santa Clara Valley Transportation Authority (“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.

ABOUT 2000 MEASURE A:

In November 2000, the voters in Santa Clara County approved Measure A ballot (“Ballot”), a 30-year half cent sales tax devoted to specified public transit capital improvement projects and operations in the county. Ballot passed by a 70.3 percent majority vote. Collection of the Ballot sales tax began on April 1, 2006 and will continue through March 31, 2036.

The VTA Board of Directors is responsible for implementation of the 2000 Measure A Program and for all policy-related decisions including the composition, implementation schedule and funding level of projects.

The Ballot listed 14 specific projects or project areas:

- Extending BART from Alameda County to the cities of Milpitas, San Jose and Santa Clara
- Providing connections from the Norman Y. Mineta San Jose International Airport to BART, Caltrain and VTA light rail
- Extending light rail from downtown San Jose to the East Valley
- Purchasing low-floor light rail vehicles
- Improving Caltrain by double-tracking to Gilroy and electrifying from Palo Alto to Gilroy
Increasing the level of Caltrain service
- Constructing a new Palo Alto Intermodal Transit Center
- Improving service in major bus corridors
- Upgrading the Altamont Commuter Express (ACE) Service
- Improving Highway 17 Express Bus Service



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- Connecting Caltrain with the Dumbarton Rail Corridor
- Purchasing zero-emission buses and constructing support facilities
- Developing new light rail corridors
- Funding operating and maintenance costs for increased bus, rail and paratransit services

About the 2000 Measure A Citizens Watchdog Committee

The 2000 Measure A ballot specified that an independent body of private citizens, the 2000 Measure A Citizens Watchdog Committee (“CWC”/ “Committee”), is responsible for: (i) reviewing all 2000 Measure A expenditures, (ii) conducting an audit each fiscal year, to be performed by an independent auditor, (iii) holding public hearings and issuing reports to inform county residents how the funds are being spent, and (iv) publishing the results of the independent audit and the annual report in local newspapers.

ABOUT RFP S20130: VTA seeks proposals (each, a “Proposal”) from qualified Certified Public Accountant (“CPA”) firms (each, a “Proposer”) to provide the annual compliance and/or performance audit services (“Services”) related to the 2000 Measure A Program (“Program”).

The Ballot requires the CWC to have an audit conducted annually by an independent auditor that will review the receipt of revenue and expenditure of funds. The CWC has the 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 will be contracted by VTA to provide the services required by CWC. The selected firm (“Contractor”) reports directly to the CWC.

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

These compliance and/or performance audit reports will be included in Committee 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.

Selected firm must perform the Services; subcontracting is not allowed.

LIMITATIONS: Firms currently serving as VTA’s financial auditor or VTA’s Auditor General are ineligible to propose.

NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING: The Proposer(s) selected under this Request for Proposals (“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 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 solicitation 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 solicitation.

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 a 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.



I. INSTRUCTIONS TO PROPOSERS

A. 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 Proposers as an addendum. All references in this RFP to “time” are Pacific Time.

Table 1

ACTIVITY	DATE/TIME
Issue RFP	September 3, 2020
Deadline to Submit Questions	September 11, 2020 at 02:00 pm
Deadline to Submit Proposal	October 1, 2020 at 02:00 pm
Interviews	October 27, 2020

B. 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 S20130 Compliance Audit Services for the 2000 Measure A Citizens Watchdog Committee.**” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the 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 communication with someone other than the Designated Point of 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 is as follows:

Norman David, Contracts Administrator
Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San Jose, California 95134
Email: norman.david@vta.org

C. 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.

D. ADDENDA/CLARIFICATIONS: VTA reserves the right to make changes to these RFP 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 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 must include “RFP S20130 QUESTIONS” in the subject line.

Responses from VTA will be published on the VTA online procurement website.

E. SUBMISSION OF PROPOSALS: All Proposals must be submitted to the Designated Point of Contact no later than the date and time stated in Table 1.

The Proposer must submit one (1) copy of the Proposal in an electronic format in the form of a flash drive or by email to the Designated Point of Contact. Email submissions must not exceed 25MB.

The email submission or flash drive package must bear the Proposer’s name and address, and be clearly labeled as follows:

“RFP S20130 Compliance Audit Services for the 2000 Measure A Citizens Watchdog Committee”

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.

F. 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.

G. 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.

H. CONTRACT TYPE: It is anticipated that VTA will award a professional services contract (“Contract”) for services to be provided to the CWC. The CWC has the authority to advise VTA which firm to select and retain, subject to conformance with competitive bidding requirements specified by Government Code. The Contractor will report directly to the CWC. If awarded, the Contract will be Firm Fixed Priced with a minimum term, subject to negotiation, of three (3) years with four (4) one-year options to extend to yield a maximum potential contract term of seven (7) years. The CWC will advise VTA on whether or not to exercise any contract extension options. The 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. The Proposer awarded the Contract hereunder (if any) is referred to herein as “Contractor”.

I. 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.

J. 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.

K. 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 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.

L. INCORPORATION OF EXHIBITS AND ATTACHMENTS: All exhibits, and attachments referenced in this RFP are incorporated herein by this reference.

II. PROPOSER'S MINIMUM QUALIFICATIONS

A. 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 in the State of California.
2. Have comprehensive knowledge of financial, compliance, and internal auditing.
3. Have a demonstrated minimum of five (5) years experience and comprehensive knowledge providing internal audit services to public transportation or other governmental agency comparable in size, responsibilities, and complexity to VTA.
4. Possess knowledge of regulations and codes regarding financial, compliance, and internal auditing for a public transportation or other governmental agency.
5. Meet the current independence standards of the Government Accounting Office ("GAO") Standards for Audit of Governmental Organizations, Programs Activities and Functions.
6. Have staffing capacity to assign to the engagement at least two (2) qualified, currently and continuously throughout the term of the Contract, licensed certified public accountants (CPAs) in the State of California, 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



The Proposer must:

1. Have undergone a recent successful peer review which provides that the system of quality control for the firm's accounting and auditing practice has been suitably designed and complied with.
2. Meet specific qualifications requirements imposed by federal, state, and local law, rules, and regulations.
3. Perform compliance audits in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants.
4. Be thoroughly familiar with:
 - Generally Accepted Government Auditing Standards issued by Comptroller General of the United States.
 - Governmental Accounting, Auditing and Financial Reporting issued by the Government Finance Officers Association.
 - Governmental Accounting Standards Board Statements, U.S. Office of Management and Budget ("OMB") Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations.
 - The most current guidelines for financial and compliance audits of federally, state, and locally assisted programs.
 - The 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.
 - 2 CFR Parts 200 and 225, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.



III. EVALUATION AND SELECTION

A. 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 transit 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, and project approach 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; basis on which prices are quoted.

B. 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 one (1) hour.

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.

Additionally, the Proposer selected by the review board is also asked to keep November 10, 2020 available for a final short presentation before the full CWC at its scheduled meeting. The decision by the Committee on the selection of the preferred vendor and award of the contract is scheduled for this meeting.

C. BASIS OF AWARD: When the review board has completed its work, negotiations may be conducted for the extent of services to be rendered.

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.



IV. PROPOSAL FORMAT AND CONTENT

- A. 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.
- B. CONTENT:** The Proposer shall include the information described below:
- 1. 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.
 - 2. 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, although VTA reserves the right to check other references beyond the three provided.
 - 3. WORK PLAN/PROJECT UNDERSTANDING:** By presentation of a well-conceived work plan, this section of the Proposal must establish the Proposer understands the CWC's duties and work requirements and Proposer's ability to satisfy those duties and requirements. The work plan must describe the work assigned to the prime. The work plan must also include a timetable for completing all work specified in the Scope of Services.
 - 4. PROJECT STAFFING:** This section must discuss how the Proposer would propose to staff this project. Proposer project team members must 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 must be included. Key personnel will be an important factor considered by the review board. Once the Proposal is submitted, any change of key personnel must be approved by VTA.
 - 5. ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit them with the Proposal.



6. **SAMPLE AUDIT REPORT:** The Proposal shall include a brief example demonstrating how the Proposer would present its finding in its audit report. Actual data need not be used.

V. **BUSINESS DIVERSITY PROGRAM POLICY:** Contractor shall adhere to VTA's Business Diversity Program requirements.

A. **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 or call the Office of Business Diversity Programs at (408) 321-5962 for assistance in identifying eligible MWBE firms. Listings of eligible firms are also available at the following:

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

B. **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.

1. **SBE WITH NO SET GOAL ASSIGNMENT:** VTA has 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>



2. **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.
 - a. 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.
 - b. It is the Proposer's sole responsibility to verify to VTA that a sub-consultant has a SBE/DBE certification.
3. **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.sdbbe.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.

4. **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.

C. 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.

VI. **INSURANCE REQUIREMENTS:** Contractor shall adhere to the insurance requirements set forth in Exhibit E. 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.

VII. **PROTESTS**

A. 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 of this RFP. If necessary, the closing date of this RFP may be extended pending a resolution of the protest.

- B. 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 must 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 will have an opportunity to appear and be heard before the VTA prior to the opening of Proposals in the case of protests based on the content of the RFP 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 must be addressed to:

Santa Clara Valley Transportation Authority
Attn: John Wesley White, Chief Procurement Officer
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 <https://www.vta.org/sites/default/files/2020-04/Bid%20Protests%20Procedure.pdf>.

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.

VIII. **SCOPE OF SERVICES:**

Introduction

The compliance audit process normally commences by/before the end of the calendar year in which the fiscal year under audit was completed. At the start of each audit cycle, the selected firm will, normally at the CWC's December or January meeting, submit to the CWC for review, input, and approval a summary of the proposed audit plan and schedule for that specific audit.

The engagement partner and/or manager from the selected compliance audit firm will attend a minimum of two (2) CWC meetings: 1) to coordinate with the Committee on the audit plan,



scope, schedule, and deliverables while also addressing any questions or concerns; and 2) to present the draft audit report to the Committee and address any questions or concerns. Completion of the audit and presentation of the audit report to the CWC is projected to normally take between two (2) and four (4) months from inception to Committee acceptance.

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

These compliance audit reports will be included in Committee 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 CWC.

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

- A. Conduct an annual compliance audit of the Program expenditure to render an auditor's opinion on whether expenditures during the subject period were spent in accordance with the intent of the Ballot approved by voters.
- B. Coordinate and reach mutual agreement with VTA staff on the scope and schedule of fieldwork prior to its initiation. Fieldwork shall be initiated during the month of January.
- C. Attend the January CWC meeting, or another agreed upon date, to coordinate with the committee on the audit plan, scope, schedule, and deliverables while also addressing any questions or concerns. The exact dates for each audit cycle will be determined between the CWC and Contractor.
- D. Prepare a written report on the findings, if any, and auditor's opinion. The draft audit report must be submitted for review and comment by VTA staff by the end of the first full week of March each year, or other agreed upon schedule. Report must be finalized for publication and provided to VTA, in accessible PDF format (WCAG 2.0 compliant), by the end of the third full week in March or other agreed upon schedule.
- E. Present the draft audit report at the April CWC meeting, or another agreed upon date, and address any questions or concerns either verbally at the meeting and/or in a subsequent follow-up written correspondence (including email).
- F. Following presentation to the CWC of the draft audit report, and following incorporation of any corrections or adjustments needed or requested, Contractor must provide to VTA, in accessible PDF format (WCAG 2.0 compliant) and by the Committee's scheduled May meeting or other agreed upon date, the electronic file of



the final formatted report for use in the CWC's Annual Report and/or any other method(s) selected by the CWC to execute its ballot-defined responsibilities of informing the public. Thirty (30) bound color copies of each annual report must be provided for distribution by/before the scheduled May CWC meeting unless VTA indicates otherwise in writing. The costs associated with the thirty (30) bound color copies must be included in the proposal.

- G. As requested by the CWC, present an Executive Summary of the report in-person to the VTA Board of Directors and/or its Governance & Audit Committee. The schedule for this action, if needed, will be determined in coordination with the CWC.
- H. Include as supplementary information in the audit report the pre-formatted Measure A Program project summary pages provided by VTA. These summaries, which include visual aids, enhance the presentation and reader understanding of the Measure A Program and its component projects.
- I. Provide working papers and assistance, if required, to the VTA External Financial Auditor on the results of the Program compliance audit. Working papers will be provided in either electronic or hardcopy format, whichever requested by the recipient. Proposal should include the cost (cost per sheet) for providing hardcopy and cost (if any) for electronic format.



IX. 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



FORM 1. 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)

POINT(S) OF CONTACT

<u>Primary</u>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

<u>Alternate</u>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

AUTHORIZED SIGNATORIES:

<u>Primary</u>	
Name/Title	_____
Signature	_____
E-mail	_____

<u>Alternate</u>	
Name/Title	_____
Signature	_____
E-mail	_____



FORM 2. 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](#) 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
Liz Kniss	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: _____

2. 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: _____



RFP S20130 Compliance Audit Services for the 2000 Measure A Citizens Watchdog Committee

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:



FORM 3. 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



FORM 4. COST PROPOSAL FORM – Three-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 3
A. 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*)			
B. OPTION YEARS TOTAL			\$
PROPOSAL TOTAL			
TOTAL NUMBER OF PROPOSAL YEARS (Minimum 3, Maximum 7)			
PROPOSAL BASE AMOUNT			\$
OPTION YEARS TOTAL			\$
PROPOSAL TOTAL (A + B)			\$

Firm Name:

Name Title

Signature



FORM 4. LISTING OF MWBE PRIME AND SUBCONTRACTORS

Firm (Prime): _____ Phone: _____

MWBE: Yes No Age of Firm _____

Address: _____ Name & Title: _____

City, State, _____ Signature/ _____

Zip: _____ 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. _____



FORM 5. LISTING OF SBE PRIME AND SUBCONTRACTORS

Firm (Prime): _____ Phone: _____

SBE: Yes No Age of Firm _____

Address: _____ Name & Title: _____

City, State, _____ Signature/ _____

Zip: _____ 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 a SBE regular dealer. Credit for SBE manufacturers is given at 100% toward the SBE goal **only where the SBE vendor manufactures or substantially alters the material prior to resale.**

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

A 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 % %



FORM 6. 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: _____

2. 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
_____	_____
_____	_____
_____	_____
_____	_____

3. 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 _____



X. EXHIBITS

EXHIBIT A – SAMPLE CONTRACT

EXHIBIT B – SCOPE OF SERVICES

EXHIBIT C – COMPENSATION, INVOICING, AND PAYMENTS

EXHIBIT D – RATE SCHEDULE

EXHIBIT E – INSURANCE REQUIREMENTS

EXHIBIT F – SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS



EXHIBIT A CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
CONTNAME
FOR
[SERVICES]

CONTRACT NO. S20130

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

- A. SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor, and materials to perform the services described in Exhibit B (herein referred to as “Services”).
- B. 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 December 31, 2021(unless otherwise earlier terminated pursuant to the terms and conditions set forth herein).

VTA may, at its option, extend the term of the Contract for [x] additional years (each an “Option Year”) as follows:

Option Year 1: XX/XX/XXXX – XX/XX/XXXX

Option Year 2: XX/XX/XXXX – XX/XX/XXXX

VTA may unilaterally exercise its Option Years by sending [X] days written notice to Contractor.

- C. 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.
- D. COMPENSATION:** Contractor shall be paid in accordance with Exhibit C for the Services.

Total compensation for the Services provided hereunder shall not exceed \$xx,xxx.00.

E. PERFORMANCE OF THE SERVICES:



-
1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.
 2. 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.

F. ASSIGNMENT AND SUBCONTRACTS:

1. 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.
2. 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.

G. 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.

H. AUDIT AND RECORDS:

1. 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.
2. 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.



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3. 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.
 4. The provisions of this AUDIT AND RECORDS section shall be included in any subcontracts hereunder.

I. PROHIBITED INTERESTS:

1. **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.
2. **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.
3. **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.

J. TERMINATION AND SUSPENSION:

1. 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.
2. 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.

3. 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.
4. 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.

K. GENERAL PROVISIONS:

1. **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.
2. **CIVIL RIGHTS:**
 - a. **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.
 - b. **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.



3. **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.
4. **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.
5. **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.
6. **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.
7. **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.
8. **INDEPENDENT CONTRACTOR:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.



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9. **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.
 10. **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.
 11. **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.
 12. **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.
 13. **INCORPORATION OF EXHIBITS AND ATTACHMENTS:** All exhibits and attachments referenced in this Contract are incorporated herein by this reference.

L. 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.

1. AUTHORIZED REPRESENTATIVES:

VTA:

John Wesley White, Chief Procurement Officer
3331 N. First Street, Bldg. B
San Jose, CA 95134-1927
john.white@vta.org

Contractor:

Name/Title
Company Name
Address
City/State/Zip
Telephone
Email

2. **NOTICES:** Notices shall be in writing and addressed to the Authorized Representatives at the addresses set forth above.



-
- 3. 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:

Norman David, Contracts Administrator
3331 N. First Street, Bldg. B
San Jose, CA 95134-1927
norman.david@vta.org

Contractor:

Name/Title
Company Name
Address
City/State/Zip
Telephone
Email

- 4.** 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

M. INSURANCE: Contractor shall adhere to the insurance requirements set forth in Exhibit E.

N. INDEMNITY AND DEFENSE OF CLAIMS:

- 1.** 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 (such as CWC) 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. However, Contractor shall have no obligation to defend or indemnify the Indemnitees against Claims (i) to the extent they arise from the active concurrent negligence of Indemnitees, or (ii) caused by the sole negligence or willful misconduct of Indemnitees.
- 2.** 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.

3. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

O. BUSINESS DIVERSITY PROGRAM REQUIREMENTS: Contractor shall adhere to the Small Business Enterprise requirements set forth in Exhibit F.

IN WITNESS WHEREOF, VTA and Contractor have executed this Contract as of the last date set forth below (“Effective Date”).

*Santa Clara Valley
Transportation Authority*

Contractor

Name
Title

Name
Title

Date

Date

Approved as to Form

VTA Counsel



EXHIBIT B SCOPE OF SERVICES

Introduction

The compliance audit process normally commences by/before the end of the calendar year in which the fiscal year under audit was completed. At the start of each audit cycle, the selected firm will, normally at the CWC's December or January meeting, submit to the CWC for review, input and approval a summary of the proposed audit plan and schedule for that specific audit.

The engagement partner and/or manager from the selected compliance audit firm will attend a minimum of two (2) CWC meetings: 1) to coordinate with the Committee on the audit plan, scope, schedule and deliverables while also addressing any questions or concerns; and 2) to present the draft audit report to the Committee and address any questions or concerns. Completion of the audit and presentation of the audit report to the CWC is projected to normally take between four (2) and six (4) months from inception to Committee acceptance.

This compliance audit will be the primary tool, but not necessarily the only one, that the CWC will utilize to render its conclusion on whether 2000 Measure A funds are being expended consistent with the approved Program. The CWC will then formally report this conclusion to the residents of Santa Clara County.

These compliance audit reports will be included in Committee 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 CWC.

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

- A. Conduct an annual compliance audit of 2000 Measure A Program expenditure to render an auditor's opinion on whether expenditures during the subject period were spent in accordance with the intent of the 2000 Measure A ballot approved by voters.
- B. Coordinate and reach mutual agreement with VTA staff on the scope and schedule of fieldwork prior to its initiation. Fieldwork shall be initiated during January.
- C. Attend the January CWC meeting, or another agreed upon date, to coordinate with the committee on the audit plan, scope, schedule and deliverables while also addressing any questions or concerns. The exact dates for each audit cycle will be determined between the CWC and its compliance auditor.
- D. Prepare a written report on the findings and auditor's opinion. The draft of this document must be submitted for review and comment by VTA staff by the end of the first full week of March each year, or other agreed upon schedule. Report must be finalized for publication and provided to VTA, in accessible PDF format (WCAG 2.0 compliant), by the end of the third full week in March or other agreed upon schedule.



- E. Present the draft audit report at the April CWC meeting, or another agreed upon date, and address any questions or concerns either verbally at the meeting and/or in a subsequent follow-up written correspondence (including email).
- F. Following presentation to the CWC of the draft audit report, and following incorporation of any corrections or adjustments needed or requested, contractor must provide to VTA, in accessible PDF format (WCAG 2.0 compliant) and by the Committee's scheduled May meeting or other agreed upon date, the electronic file of the final formatted report for use in the CWC's Annual Report and/or any other method(s) selected by the CWC to execute its ballot-defined responsibilities of informing the public. Thirty (30) bound color copies of each annual report must be provided for distribution by/before the scheduled May CWC meeting unless VTA indicates otherwise in writing.
- G. As requested by the CWC, present an Executive Summary of the report in-person to the VTA Board of Directors and/or its Governance & Audit Committee. The schedule for this action, if needed, will be determined in coordination with the CWC.
- H. Include as supplementary information in the audit report the pre-formatted Measure A Program project summary pages provided by VTA. These summaries, which include visual aids, enhance the presentation and reader understanding of the Measure A Program and its component projects.
- I. Provide working papers and assistance, if required, to the VTA External Financial Auditor on the results of the Measure A compliance audit. Working papers will be provided in either electronic or hardcopy format, whichever requested by the recipient.



EXHIBIT C COMPENSATION, INVOICING and PAYMENT
FIRM-FIXED PRICE

- A. COMPENSATION:** This is a firm-fixed price Contract with a maximum value of \$XX,XXX.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.
- B. INVOICING:** Contractor shall invoice VTA on a monthly basis for partial payments corresponding to the percentage of work actually completed by Contractor.
- 1. 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.
 - 2. 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.
 - 3. 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
 - 4.** 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.
- C. 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 D RATE SCHEDULE

Effective Date **MM/DD/20YY**

Identify the named key personnel, firm name, classification and labor rate. Provide the classification and labor rate for all your proposed staff.

Key Personnel:

Personnel Name	Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate

Unnamed Personnel:

Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate



EXHIBIT E INSURANCE REQUIREMENTS

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



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- 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: \$1,000,000 each occurrence/aggregate minimum limit per claim.
- 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, the 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 the Contractor, including VTA's general supervision of the Contractor; products and completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the 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:

- a.** 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 the Contractor and its subcontractors for VTA.
- b.** 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 the 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
- b.** 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 the 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 deductibles 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
Contract No. S20130

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 the 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 the Contractor to suspend work at Contractor's expense until a new policy of insurance is in effect.



EXHIBIT F SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

A. MWBE POLICY:

1. 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.
2. Contractor will use all reasonable efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontracting work under this Contract.

B. SMALL BUSINESS ENTERPRISES:

1. 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.
 2. 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.
 3. 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.
 4. 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.
- C. 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.



XI. APPENDICES

**ALL APPENDICES ARE AVAILABLE FOR DOWNLOADING
FROM VTA WEBSITE**

2000 Measure A Ballot, and Resolution