



Santa Clara Valley
Transportation Authority

Small Business Enterprise
(SBE) Program

Revised 240223

POLICY STATEMENT

Section 26.1, 26.23: Objectives/Policy Statement

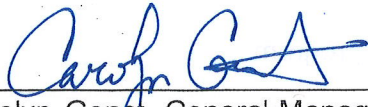
The Santa Clara Valley Transportation Authority (VTA) has established a Small Business Enterprise (SBE) Program to ensure SBEs as defined in 13 Code of Federal Regulations (CFR) Part 121 and 49 CFR Part 26 are afforded every opportunity to participate in VTA's contracting program. It is also VTA's policy to engage in the following actions continually:

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

Remi Awosanya, Contracts Compliance Manager, has been delegated as the SBE Liaison Officer. In that capacity, Nicole Chapman is responsible for implementing all aspects of the SBE program. Implementation of the SBE program is accorded the same priority as compliance with all other legal obligations incurred by the VTA in its financial assistance agreements with the State and/or Local requirements.

VTA has disseminated this policy statement to the VTA Board of Directors and all of the components of our organization. This statement has been distributed to business communities that perform work for VTA and at pre-bid/pre-proposal meetings. The distribution was accomplished in the following ways:

1. A copy of the policy has been posted on the VTA website, Business Diversity Programs VTA, and through electronic notifications to SBE firms.
2. A copy of this policy statement was made available to each attendee of all pre-bid meetings dealing with covered contracting opportunities.
3. This policy statement and the entire program will be an appendix to the VTA Procurement, Contracts, and Business Diversity (PCBD) Procedures Manual.



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

Feb. 27, 2024
Date

California Unified Certification Program (CUCP) – One-stop certification clearinghouse, enabling applicants to apply once for DBE certification. The CUCP DBE database can be accessed at <https://californiaucp.dbesystem.com/>.

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

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

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

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

North American Industrial Classification System (NAICS)- The classification number which best describes the primary business of a firm. The basis for industry classification changed from the 1987 Standard Industrial Classification System (SIC) to the 2017 NAICS. See **Attachment E**, "SBE Certification procedures and Forms".

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

Small Business Enterprise (SBE) – Small Business Enterprise is defined by the Small Business Administration (SBA) as a small business concern that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period; and meets SBA's size standards of 13 CFR Part 121, established for types of economic activity, or industry, generally under the NAICS. SBEs also must meet the small business size standards in Title 49 CFR Part 26.

SBE Directory- VTAs list of firms certified by VTA, which is used by VTA and its contractors to identify SBE potential contractors and subcontractors and suppliers. The SBE directory can be accessed via the website link at:

[Small & Disadvantaged Business Enterprise Compliance Reporting System - Santa Clara Valley Transportation Authority \(mwdbe.com\)](http://mwdbe.com).

SBELO – Small Business Enterprise Liaison Officer

D. Record Keeping Requirements

Uniform Report of SBE Awards or Commitments and Payments

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

Bidders List

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

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

Information, Confidentiality, and Cooperation

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

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

E. Public Outreach

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

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

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

Effort: Attendance at pre-bid/pre-proposal meetings, if held by VTA.

Evidence: Name, title, and date of person(s) attending, to be verified by attendee sign-in sheet.

2. Identification of Scope of Work for Subcontracts in Order to Meet the Project Goal

Effort: Selecting portions of the work that can be subcontracted to SBEs in order to increase the likelihood that the overall SBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE utilization.

Evidence: Identifying the scope of work the Bidder/Proposer intends to perform with its own workforce and identifying the subcontracting items the bidder/proposer made available to SBEs to meet the established SBE goal.

3. Advertisement of Subcontracting Opportunities

Effort: Advertisement in trade association publications and small /minority and business focused media. DBEs are SBEs and should be included in solicitations. Advertisements must identify specific subcontracting opportunities being solicited, project name and location, bidder/proposer, contact person including name, address, phone, fax, and email, and bid solicitation submittal due date. Advertisements should appear a minimum of 21 days prior to bid due date.

Evidence: As verification of publication, Bidder/Proposer must provide a listing of advertisements placed, including copies of advertisement tear sheets and/or proof of publication containing at minimum the information specified above.

4. Written Requests for Bids/Proposals

Effort: Provision of written notices to the maximum number of SBEs/DBEs firms to solicit interest for each subcontracting area identified sufficient to meet the established goal. Notices should be issued at least 10 days prior to bid submittal due date.

Evidence: Copy of the solicitation letter, list of recipients grouped by each identified subcontracting area identified and identification of mode of communication (letter, email, fax), including corresponding copies of letters and/or fax confirmations. A minimum of ten (10) SBE/DBE firms shall constitute a sufficient number for each subcontracting area, North American Industry Classification System (NAICS) code, provided the databases contain at least 10 firms for that category.

5. Solicitation Follow-Up

Effort: Subsequent efforts to solicit SBEs/DBEs within all available subcontracting areas. The follow-up solicitation should occur within a reasonable time of the initial solicitation, in order to allow the Bidder/Proposer to solicit additional SBEs/DBEs and identify additional subcontracting items to draw greater interest and sub-bids.

Administrative Reconsideration

Within 5 days of being informed by *VTA* that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidder/proposers should make this request in writing to:

Remi Awosanya
Contracts Compliance Manager
Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San Jose, CA 95134-1906

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

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

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

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

F. Quarterly SBE Utilization Report

Contractors are required to *submit quarterly SBE Utilization Reports* electronically to the **VTA** Office of Business Diversity Programs. These quarterly reports shall be submitted electronically, and the Contractor will document the dollar value of payments to SBE/DBE firms and the percentage of the contract completed. **VTA** will monitor the contract for compliance with SBE requirements. OBDP may require monthly utilization reports if it deems it necessary.

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

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

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

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

3. An SBE is a for-profit business that has demonstrated by a preponderance of evidence that it satisfies the following SBE program certification standards:

Business Size Standards

- a. The SBE Program at VTA defines small business using the Small Business Administration size standards of 13 CFR Part 121.
- b. Applicant SBE firms must demonstrate that their business, over the last consecutive three years, has gross receipts that average less than \$26.29 million per year. This figure may be periodically adjusted to be consistent with the USDOT size standards established for the DBE Program.

Quality of Ownership

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

Affiliation

The SBE Program at VTA defines affiliation using the Small Business Administration affiliation rules, 13 CFR Part 121.103. Affiliation criteria and guidance provided by USDOT for the DBE Program may also be utilized in determining affiliation.

Ownership Discretion and Control

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

Removals of Certification

1. A certified SBE may be removed if it is already a certified DBE. A certified DBE is counted toward the SBE goal credit.
2. A certified SBE may be removed for ineligibility, for lack of cooperation, or at the wishes of the certified SBE. When a firm's eligibility is removed, the burden of proof for removal of certification shall be on VTA.
3. In a removal of certification for ineligibility, VTA must ensure that the decision to remove a firm's SBE certification is made by a VTA representative other than those who participated in actions leading to the removal of the firm. VTA has designated the Manager of Contracts Administration and Material Management or her/his designee to hear appeals for removals due to ineligibility.
4. Renewal of Certification: A firm denied certification or who has had its certification removed under these provisions shall be permitted to re-apply for certification after a period of one year following the date of initial denial or removal.

LIST OF ATTACHMENTS

- Attachment A Organizational Chart
- Attachment B Sample Uniform Report of SBE Awards or Commitments/Payments
- Attachment C Form 4- Listing of DBE/SBE Contractor or Subcontractors
- Attachment D Form 4A -Supplemental Contractor/Proposer and Subcontractor Information
- Attachment E SBE Certification Procedures and Forms

ATTACHMENT B

Sample Uniform Report of SBE Awards or Commitments / Payments

Santa Clara Valley Transportation Authority
 - OBDP Report of SBE Commitments/Awards and
 Payments
 Reporting Period: Apr 1 - Sept 30 2013

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

ATTACHMENT D

FORM 4A – Supplemental Contractor/ Proposer

and

Subcontractor Information

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

Date:						
Contract Name & Number:						
Firm Name:						
Firm Address:						
Phone #:						
Fax #:						
Age of Firm:						
(check one) Annual Gross Receipts <u>indicate bracket of income</u>						
		\$500K-\$1M	\$1M-\$4M	\$4M \$6M	\$6M-13M	Above \$13M

Check one: DBE _____ SBE _____ Non-SBE/DBE _____
 Ethnicity* _____ Gender _____ Work/Trade category _____

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

Completed by: _____

Email Address: _____

To be completed by bidder:

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

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

The description of this firm's work is: _____

VTA, Office of Business Diversity Programs
 3331 North First Street, Building B, San Jose, CA
 95134-1906

If you require additional forms or information, call {408} 321-5962