

**ALAMEDA COUNTY TRANSPORTATION AUTHORITY
AND
ALAMEDA COUNTY TRANSPORTATION IMPROVEMENT
AUTHORITY**

LOCAL BUSINESS CONTRACT EQUITY PROGRAM

DATE

01/17/2008

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I. POLICY

A. POLICY STATEMENT

It is the policy of the Alameda County Transportation Improvement Authority and Alameda County Transportation Authority (collectively, the Authority) to encourage businesses to locate and remain in Alameda County, to employ residents of Alameda County and to spend ACTIA/ACTA funds for goods and services within the County. The tax collected by the Authority was imposed by Alameda County voters on themselves for retail sales made within the County. The revenues are exclusively directed toward improving the transit and transportation systems within the County. In addition they have determined that small and local businesses not only provide economic and social vitality to our communities, they also help the Authority accomplish its purchasing objectives. As a result, the Authority has established this Local Business Contract Equity Program (Program) to benefit Local Business Enterprise (LBE), Small Local Business Enterprise (SLBE) and Very Small Local Business Enterprise (VSLBE).

This Program applies to contracts funded solely by Measure B funds or a combination of Measure B and local funds. Contracts that include state and federal funds must adhere to state and federal requirements.

The participation of local and small local businesses in the Authority's Contracts is consistent with the voter mandate, and generates other economic benefits for the residents of Alameda County and adds to the sales tax revenues for the Authority. To qualify for inclusion in the Authority's Program, an applicant must be a Local Business Enterprise or Small Local Business Enterprise (as such terms are defined in Appendix A). This Program is neutral as to race, ethnicity, national origin, age, sex, religion, and sexual orientation.

B. BACKGROUND

The Authority adopted a preference Program in 1986 with the inception of the first Measure B. Initially the program goal was to ensure participation of minority and women-owned businesses, as well as local firms. Over the years the program has evolved to reflect changes in statutes and court rulings associated with contract equity issues at both the state and federal levels.

In 2000 and 2001, the Authority formally adopted the LBE/SLBE Program with the specific purpose of encouraging businesses of all sizes to locate and remain in Alameda County, as well as to employ County residents, and to spend Measure B funds for goods and services within Alameda County. In 2007, the Authority added the VSLBE program along with other policy changes designed to further improve the program.

The Authority administers over \$100 million of Measure B funds annually for area-wide transportation capital projects, local streets and roads, mass transit projects, bicycle and pedestrian safety, special transportation for seniors and the disabled, and transit center development. These funds translate into significant dollars in transportation-related contracts for Alameda County based firms.

It is the Authority's objective to identify and include qualified Alameda County based businesses in the purchases of products and services required by the Authority and its staff. The Authority welcomes all potential vendors who can fulfill our certification and procurement requirements.

C. OVERVIEW

The purpose of the Program is to increase the opportunities for firms located in Alameda County to provide their products and services to the Authority.

1. Benefits

- Encourages firms to locate in Alameda County and employ residents of Alameda County.
- Certified LBE and SLBE firms can more effectively compete for contract opportunities above \$50,000, while certified VSLBE firms are given preference on administrative contracts under \$50,000.
- Certified LBE, SLBE or VSLBE firms are eligible to be listed in the ACTIA's directory of certified businesses, which other businesses may use to identify partners.

2. Eligibility

For a business (sole proprietorship, partnership, corporation, or joint venture) to be eligible under this program, it must meet the following criteria:

- Must have an operating business located in Alameda County.
- Serve a "Commercially Useful Function" and have customers.
- The specific requirements to qualify for LBE, SLBE or VSLBE certification are described fully under Appendix A-Definitions.

3. How to apply

Go to the Authority's website: www.actia2022.com/opportunities.html for application and certification information.

4. Policy Applicability

- Applies to all Authority contracts and sponsor capital projects over \$50,000.
- The VSLBE preferences apply to Authority Administrative contracts under \$50,000.
- Administrative, Professional and Construction Contracts.

- Authority contracts funded completely or partially with Measure B and local dollars (excludes state and federal funding)
- Subject to Waiver Provisions and Sponsor Participation Policy section.

TABLE 1

Summary of Goals			
Type of Contract	LBE	SLBE (Counts towards LBE)	VSLBE Participation (Counts towards LBE and SLBE)
Construction	60%	Contract Specific	
Professional	70%	30%	
Administrative	70%	30%	Preference for Contracts under \$50,000

II PROGRAM IMPLEMENTATION PROCEDURES

A. GOALS AND PREFERENCES

The LBE and SLBE goals apply to Authority contracts over \$50,000, and Sponsor capital project contracts over \$50,000.

- 1. LBE Goals.** The LBE Goals are to award sixty percent (60%) of all Construction contract dollars, and seventy percent (70%) of all Professional Services contracts over \$50,000 that are completely or partially funded with Measure B and local funds, to businesses that are certified as a LBE. SLBE and VSLBE participation also counts in fulfilling the applicable LBE participation goals.

The LBE Goal for Construction Contracts can be met through the participation of Prime Contractor and /or Subcontractor(s). If a bidder fails to meet the LBE Goals on a construction contract, they shall not be awarded the contract unless the GFE requirements are met (see Appendix C).

The LBE Goal for Professional and Administrative Services contracts applies to the Prime Contractor on each Professional Services contract in excess of Fifty Thousand Dollars (\$50,000) awarded by the Authority or Sponsoring Agency. A bidder who fails to meet the LBE Professional Services Goals shall not receive the applicable credit in the evaluation process. The applicable credit for meeting the LBE goals is 5% of the total evaluation points.

- 2. SLBE Goals.** The SLBE Goals are set on a contract-specific basis for all Construction Contracts. Subcontracts which are counted as part of meeting the applicable SLBE Goal also count toward meeting the applicable LBE Goal. If a bidder fails to meet the contract-specific SLBE Goals on a construction contract, they shall not be awarded the contract unless the GFE requirements are met (see Appendix C).

The SLBE Goals are thirty percent (30%) on all Professional Services Contracts and Administrative contracts over \$50,000. Subcontracts which are counted toward meeting the applicable SLBE Goal also count toward meeting the applicable LBE Goal.

The SLBE Professional Services Goals can be met by the participation of either the Prime and/or Subcontractors. VSLBE participation may also be used to meet the SLBE Goals. A bidder who fails to meet the Professional Services or Administrative Services SLBE Goals shall not receive the applicable credit in the evaluation process. The applicable credit for meeting the SLBE goals is 5% of the total evaluation points.

3. **VSLBE Preferences.** VSLBE preferences apply to administrative contracts between \$25,000 and \$50,000 awarded by the Authority. A bidder who fails to meet the Administrative Services VSLBE target shall not receive the applicable credit in the evaluation process. The applicable credit for meeting the VSLBE goals is 20% of the total evaluation points. On administrative contracts under \$25,000, the Authority will target VSLBEs.

B. WAIVER OF GOALS

Any request to waive the goals must be approved by the Authority. The Authority or a Sponsor through a council/board resolution, is authorized to recommend that a contract be advertised without LBE and/or SLBE Goals. The recommendation must be reviewed and approved by the Authority Board. Before making a recommendation to waive the goals, the following due-diligence steps must be completed:

1. Define the draft scope of work, items of work and estimated value of work items.
2. Review the Authority certification database and the certification database of other Alameda County Certifying Agencies for businesses which are ready and available to provide the listed items of work and who could become certified.
3. Conduct focused outreach to identify Alameda County businesses that are willing and able to perform the listed items of work.
4. Post the “Intent to Waive Goals” notice and the description of the draft scope of work and items of work on the Authority’s website at least 45 days before advertising the contract so that LBE, SLBE or VSLBE contractors have ample time to notify the Authority of their availability.

If the Authority determines after completing the due diligence steps listed above that there are no LBEs and/or SLBEs available to perform the items of work, a recommendation shall be submitted to the Board of Directors for permission to advertise without one or both goals. The Board report shall contain a detailed description of the due diligence steps taken to identify LBE/SLBEs to perform the items of work.

C. USE OF SPONSOR PARTICIPATION POLICY

Sponsor may request a substitution of its own local business preference program in lieu of the Authority's Policy. Such a request must be approved by the Authority Board. Prior to presentation to the Authority Board for approval, such a request must demonstrate that:

1. Over half of the project's funding is from Sponsor's own resources,
2. The sponsor's local preference program complies with applicable laws, and satisfies all provisions of its contractual obligations with the Authority,
3. The policy and the request have been approved by the sponsor's council/board and documented by means of a resolution,
4. Agree that sponsor shall bear the full responsibility and cost related to the implementation and defense of its program.
5. Agreement to comply with Authority's semi-annual reporting requirements.

D. ELIGIBILITY AND CERTIFICATION

1. **Certification Procedure.** Businesses must submit Common Application or available certification documents from one of the regional agencies, along with applicable supplemental documents as described in Appendix F. LBEs, SLBEs, and VSLBEs must be certified prior to submission of bid/proposal, to determine whether the Prime Contractor has met the applicable LBE, SLBE, and VSLBE Goals. Each business seeking certification under this Program shall submit the Common Application form and an ACTIA Supplemental Questionnaire (Appendix F) along with the required supporting documents. If deemed appropriate, the Authority may conduct a site visit before certifying the firm. The Authority will endeavor to notify the business of the certification status promptly after the application is received.
2. **Recertification.** Authority certifications are valid for two (2) years from the month of certification and must be renewed biennially. If the certification lapses or a recertification is denied, a complete certification application must be submitted.
3. **Investigations and Challenges of LBE, SLBE, or VSLBE Status.** The Authority may investigate any written communication on the certification status of a business. The communication must clearly delineate the reasons, including any evidence, on which the validity of a certification is questioned. Firms determined to have falsified their status as an LBE, SLBE or VSLBE will be decertified and shall be debarred from bidding on future Authority work for a period of up to three years.

4. **Status Changes.** Firms that no longer meet the certification requirements due to address or size change or other reasons may be decertified or have their status changed from one category to another. The Authority shall inform regional certifying agencies of decertification and debarment, and may notify the regional agencies of the status changes.
5. **Regional Certification Acceptance.** Please refer to Appendix E for a List of Alameda County Certifying Agencies and required documents.

E. STATUS MONITORING AND REPORTING

- 1 **Measurement.** Only the value of the work actually performed by LBEs, SLBEs and VSLBEs will be counted towards the applicable Goals and/or Preferences. The Authority will count expenditures to LBEs, SLBEs and VSLBEs when the firm is performing a Commercially Useful Function on that Contract. The entire amount of that portion of a Contract that is performed by the LBE's or SLBE's or VSLBE's own workforce will be counted. This includes the cost of equipment, supplies, and materials obtained by the LBEs, SLBEs and VSLBEs for work on the Contract.
- 2 **Commercially Useful Function.** To perform a Commercially Useful Function, the business must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce. If the business subcontracts a greater portion of the work on a contract than would be expected on the basis of normal industry practice, it will be presumed that it is not performing a Commercially Useful Function. When a business is presumed in terms of performing a Commercially Useful Function as provided above, the business may present evidence to rebut this presumption. The Authority will make the final determination whether the firm is performing a Commercially Useful Function given the type of work involved and normal industry practices.
- 3 **Changes in Status.** When a firm loses its certification status after the award of the contract, the participation reported at the time of the contract award will remain unchanged. However, any additional work given to a contractor (through a contract amendment) after it has lost its certification, shall not count towards the goal.
- 4 **Joint Ventures.** For Joint Ventures, the Authority will count the total Participation dollar value (Participation ratio times the total project cost) of the LBE, SLBE or VSLBE Contract(s) equal to the distinct, clearly defined portion of the work of the Contract that the LBE, SLBE, or VSLBE performs toward the Goals/Preferences. The Participation ratio will be based on the average of LBE/SLBE/VSLBE revenue share and the profit share, if different, attributed to the LBE, SLBE or VSLBE. When a joint venture subcontracts part of the work on its Contract to another firm, the value of the subcontracted work may be counted toward the LBE, SLBE, or

VSLBE goal if the Subcontractor(s) are certified as such. Subcontracts to non-certified firms do not count toward the LBE, SLBE, or VSLBE Goals.

The dollar amount of the Joint Venture, which is to apply towards the goals for LBE, SLBE or VSLBE participation, is calculated using the following formula:

$$\begin{array}{l} \text{DOLLAR} \\ \text{VALUE OF} \\ \text{JOINT} \\ \text{VENTURE} \\ \text{CONTRACT} \end{array} \times \begin{array}{l} \text{PERCENT OF} \\ \text{LBE/SLBE/VSLBE} \\ \text{JOINT VENTURE} \\ \text{FINANCIAL} \\ \text{PARTICIPATION} \\ \text{IN THE} \\ \text{CONTRACT} \end{array} = \begin{array}{l} \text{DOLLAR VALUE} \\ \text{OF JOINT} \\ \text{VENTURE} \\ \text{CONTRACT} \\ \text{APPLICABLE TO} \\ \text{GOALS} \end{array}$$

Whenever a Joint Venture involves a LBE, SLBE or VSLBE, the Prime Consultant shall provide the Authority with a full account of the nature of the LBE, SLBE, or VSLBE, the basis for creation regarding the Joint Venture, and the responsibilities of the interested parties. Such Joint Venture shall ensure that the participating LBE, SLBE, or VSLBE have a commensurate share of the profit or loss to be realized from the Joint Venture. The agreement establishing the Joint Venture shall be in writing. The Authority shall have the right to review same and determine if such arrangement is proper and within the requirements and intent of this Program.

F. CONTRACT COMPLIANCE

Prime Contractors shall maintain the LBE, SLBE, or VSLBE participation levels achieved at the time the Contract is awarded throughout the term of the Contract. Any modification to the original participation level shall be approved by the Authority.

No substitution of a listed LBE, SLBE, or VSLBE Subcontractor can be made without the prior written approval of the Authority or Sponsoring Agency with agreement of the Authority. If an LBE, SLBE, or VSLBE subcontractor is unable to perform successfully, they will be replaced and the Sponsoring Agency or the Prime Contractor shall notify the Authority. The Authority may investigate the circumstances surrounding the request for substitution. The Prime Contractor shall make its best efforts to replace the original LBE, SLBE, or VSLBE with another LBE, SLBE, or VSLBE, respectively.

The Authority shall monitor compliance with the requirements of this Program during the term of the Contract. If the Authority determines that a Prime Contractor or Subcontractor has failed to comply with the Program, the Authority shall so notify the Contractor and the Sponsoring Agency. The Authority may require such reports, information, and documentation from Prime Contractors, Subcontractors, bidders, and the Sponsoring Agency, as are reasonably necessary

to determine compliance with this Program. The Authority may hold a hearing to evaluate potential non-compliance issues.

On a case-by-case basis, the Authority may mediate disputes between Prime Contractors and Subcontractors, as well as between the contractor and the Authority. Any party may contact the Authority and request assistance towards resolution of issues. The Authority shall investigate the matter and work with all parties to resolve the dispute. An independent mediator may be engaged by the Authority at its discretion.

If the Authority is a party to the dispute, the Executive Director shall engage an independent mediator in resolving the dispute.

G. MEANS TO INCREASE LBE, SLBE, AND VSLBE PARTICIPATION

The Authority will use the following means to increase LBE, SLBE, and VSLBE participation:

1 Pre-Advertising Activities

- a. Hold periodic workshops to inform businesses of upcoming contracts and ongoing assistance opportunities.
- b. Provide information on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of LBE, SLBE, or VSLBE and other small businesses on recipient mailing lists for bidders; ensuring the dissemination of the list of potential subcontractors to bidders regarding prime contracts; provision for information to be available in languages other than English, where appropriate).
- c. Maintain a listing of bonding and financial institutions that have demonstrated a willingness to work with LBEs and SLBEs, and provide a copy of this list to any individual, firm or organization upon request.
- d. Maintain a list of insurance companies who have represented that they will provide competitive pricing to small business enterprises for workers' compensation, liability and other business insurance, and provide copies of this list to any person, firm or organization upon request.
- e. Provide ongoing assistance to construction contractors.
- f. To the extent practicable, unbundling large contracts to make them more accessible to small businesses.

2 Pre-bid Opening Activities

- a. Schedule times for the presentation of proposal bids, quantities, specifications, and delivery schedules in ways that facilitate LBE, SLBE, or VSLBE and other small business participation.
- b. Encourage Prime Contractors to subcontract portions of work that they might otherwise perform with their own forces.
- c. Provide assistance in overcoming limitations such as inability to obtain bonding or financing by such means as simplifying the bonding process, reducing bonding requirements, and providing services to help LBE, SLBE, or VSLBE, and other small businesses, to obtain bonding and financing.
- d. Provide assistance to sponsoring agencies by evaluating bids and ways to achieve program goals.
- e. Provide the following technical assistance for construction contracts:
 - i. Access to a public plans room to review plans and specifications prior to bid opening.
 - ii. Hands-on assistance in identifying items of work for subcontracting opportunities.
 - iii. Assist in helping the Subcontractor put together a bid package.
 - iv. Conduct construction site walk-through to help the Subcontractor determine his/her capacity before submitting a bid.
 - v. Provide a list of all plan holders to Subcontractors who request this list.
 - vi. Assist in preparing bond and loan documents.
 - vii. Hold periodic workshops providing information on topics such as bonding and underwriting standards and procedures for Subcontractors; business planning; record keeping; capital formation; financial counseling; equipment utilization; technical assistance on performing highway construction, material supply, engineering or other transportation related businesses; plan interpretation; estimating; bidding; cost accounting methods; understanding and preparing project/contract documentation (i.e. required forms, work schedules, and productions schedules); safety regulations; and networking and marketing.

3 Post Award Activities

- a.** Notifying all Subcontractors of change orders to ensure that the LBE, SLBE, or VSLBE Goals are met in reporting amendments and change orders.
- b.** Help Subcontractors on the procedures and provide assistance in completing the paperwork for submitting change orders.
- c.** Assist with mobilization support by providing the Subcontractors with logistic information regarding storing their equipment and supplies on the job site.
- d.** Monitor the Prime contractor process by requiring proof of Subcontractor consent to amendments or contract change orders and allowing sufficient time for contacting Subcontractors and “demonstrations” of Good Faith Efforts by Prime Contractors.
- e.** Review achievements of project sponsors.

III REPORTING AND OTHER REQUIREMENTS

1 Reporting Requirements

The Authority shall submit an LBE, SLBE, and VSLBE Utilization Report to the Board on a semi-annual basis. The report shall include expenditures made by the Authority and sponsoring agencies during the reporting period on all active Measure B contracts. The expenditures will show award amount and payments to the primes and subcontractors by certification status.

The sponsoring agencies shall provide this information on a semi-annual basis or when requesting reimbursement from the Authority, whichever occurs first. The information shall list the total payments made on each active contract during the reporting period, in addition to awards, modifications, and payments to each LBE, SLBE, VSLBE, prime, and subcontractor.

2. Records Maintenance

The Awarding agency shall maintain accurate records for each Contract awarded. The records shall include dollar values, the nature of the goods or services to be provided, the name of the Prime Contractor awarded the Contract, the efforts the Prime Contractor employed to solicit bids from LBEs, SLBEs and VSLBEs. In addition, the information shall include all subcontracts awarded by the Prime Contractor, identifying for each its dollar value, the nature of the goods or services provided, and the name of the Subcontractor.

Prime Contractors are required to maintain certain records and documents for three years following the performance of a Contract. Such records shall include the following:

- a.** The name and address of each first-tier Subcontractor.
- b.** The name and business address, regardless of tier, of every LBE, SLBE and VSLBE Subcontractor.
- c.** The date of payment and the total dollar amount paid to each Subcontractor.
- d.** The date of work performed by their own forces along with the corresponding dollar value of the work claimed toward the applicable Goal.

These records will be made available for inspection upon request by any authorized representative of the Authority.

3. Prompt Payment

Prime Contractors will be paid within thirty (30) days of submitting an acceptable invoice, including all required supporting documentation. Accompanying the request for payment, a Prime Contractor will submit a Payment Request Form summarizing Subcontractors payments. When it pays the Prime Contractor, the Authority will include a Payment Request Form that reflects all approved items. Prime Contractors will enclose a photocopy of this Form with their payments to Subcontractors.

The Authority shall ensure that the following clauses or equivalent will be included in each Contract subject to this Program:

The Prime Contractor agrees to pay each Subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Prime Contractor receives from Authority or project sponsor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE and VSLBE Subcontractors.

The Prime Contractor agrees further to release retainage payments to each Subcontractor within 30 days after the Subcontractor's work is completed and accepted. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval by the Authority. This clause applies to LBE, SLBE, and VSLBE and non- LBE, SLBE and VSLBE Subcontractors.

4. Penalties And Sanctions

When the Awarding Agency awards a Contract subject to this Program and the Authority and/or Sponsoring Agency has cause to believe that any bidder, Prime Contractor, or Subcontractor has willfully failed to comply with any of the provisions of this Program either may conduct an investigation. Based on this investigation, if the Authority or the Sponsoring Agency (with the advice and consent of the Authority) finds non-compliance, the investigating entity will provide the Prime Contractor or Subcontractor with written notice and an opportunity to be heard, and the Authority and Sponsoring Agency may impose the sanctions described below for each violation of this Program.

In order to complete its investigation, the Authority may require such reports, information and documentation from bidders, Prime Contractors, Subcontractors, and the Sponsoring Agency as are reasonably necessary to determine compliance with the requirements of this Program. If the Authority investigates and finds willful non-compliance, the Authority shall send a written notice to the Sponsoring Agency, if any, that a determination of a bad faith non-compliance has been made.

The sanctions that may be imposed for each violation of this Program are as follows:

- a. Imposing a fine;
- b. Suspending the Contract until violation is cured;
- c. Canceling the Contract;
- d. Disqualifying a bidder, contractor, or other business from eligibility for providing goods or services to the Authority, for a period not to exceed three years.

If a Prime Contractor or Subcontractor disputes a determination of bad faith non-compliance or any sanction imposed as a result of such a determination, the Prime Contractor or Subcontractor may appeal the Authority staff's determination or sanction to the Board of the Authority (ACTIA or ACTA, as the case may be). To be considered by the Board, any such appeal must be submitted in writing to the Authority, and must be received by the Authority within 30 days after issuance of the determination of bad faith non-compliance by the Authority.

5. Program Review

This Program will be reviewed periodically by the Authority. The Authority may make such changes in the Program which are required to implement its goals and objectives. Program changes shall be submitted to the Authority Board for approval.

6. Severability

The provisions of this Program are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this program, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Program, or the validity of its application to other persons or circumstances.

7. Confidentiality

The Authority and its consultants shall safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

APPENDIX A

DEFINITIONS

The terms used in this Program are defined in the list below. The terms are in alphabetic order.

Acceptable Alameda County Certifying Agencies. These are local Alameda County certifying agencies whose certifications are accepted by the Authority along with supplemental information as a substitute for a full certification application with the Authority. Please refer to Appendix E for the list of acceptable certifying agencies and documentation requirements.

Administrative Services. Services of an administrative nature such, but not limited to legal, accounting, public relations, project control and policy support services. Administrative services exclude engineering, architectural and construction-related services, which are classified as Professional services.

Authority. Respectively, the Alameda County Transportation Authority and Alameda County Transportation Improvement Authority. The Authority is responsible for the implementation of the voter approved half-cent sales tax measure for transportation projects in Alameda County.

Awarding Agency. Authority or sponsoring agency responsible for advertising, awarding and administering the contract.

Bid. A quotation, proposal, or offer by a contractor to provide labor, material, or equipment to the Authority or a Sponsoring Agency for a price.

Caltrans. State of California Department of Transportation.

Capital Project. A project specifically listed in the Measure B Expenditure Plan.

Capital Projects Fund. Funds reserved for capital projects in the Authority's Expenditure Plans

Certification. A status granted to firms qualified through the certification application process. A firm may qualify as an LBE, SLBE, or a VSLBE, which are further defined below.

Certification List. List of certified LBEs, SLBEs, and VSLBEs maintained on the Authority's website.

Commercially Useful Function. A business that is directly responsible for providing the materials, equipment, supplies or services to the Authority as required by the bid solicitation. The Authority will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, as well as the credit claimed for its performance of

the work, and other relevant factors in determining whether a business is performing a commercially useful function.

Construction Contract. A legally binding agreement between the Authority or a Sponsoring Agency and a person or firm to provide labor, materials, or equipment for Construction Work.

Contract. A legally binding agreement obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor. A business entity with a current business license issued by a city or county.

Construction Work. Services performed by a person or firm to build or construct structures, roadways, or roadway appurtenances for the Authority or the Sponsoring Agency.

Goals. See LBE, SLBE and VSLBE Goals.

Good Faith Effort. The steps set forth in Appendix C of this Local Business Contract Equity Program, undertaken to comply with the goals and requirements imposed by the Authority for participation of LBEs and SLBEs as Subcontractors on construction contracts.

GFE Points. This is the evaluation methodology to assess whether a business that failed to meet the LBE or SLBE goals on a construction bid made acceptable efforts towards attaining the goals.

Joint Venture. An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

Local Business Enterprise (LBE). An Alameda County business that has the following characteristics:

1. A fixed business location with a commercial or residential address in Alameda County where administrative, clerical, professional and productive work is performed. The location cannot be a moveable office, post office address, telephone answering service or mailing address in an executive office suite;
2. For a business located solely in Alameda County, a valid business license issued by Alameda County or a city within the county. If the business has an office solely in Alameda County, the location of the business must have been within Alameda County for at least (1) one year prior to bid opening date;
3. If the business has one or more offices outside Alameda County, it must have at least one fulltime equivalent employee in the Alameda County office and a business license valid for **one year prior** to the bid opening date;

4. If the business has an office solely in Alameda County, the requirements in (3) above do not apply;
5. The business must have proof of a fully executed contract containing the Alameda County business address and a lease or proof of ownership of real property for the business location.

LBE Goals. The targeted level of Participation for LBEs established by the Authority for Contracts awarded by the Authority and Sponsoring Agencies funded completely or partially by the Authority and other local funds.

LBE/SLBE Program. The Authority's Local Business Enterprise, Small Local Business Enterprise Program was adopted in the Year 2000. The new Local Business Contract Equity Program replaces the previous LBE/SLBE Program.

Measure B. The local initiatives approved by the voters of Alameda County in 1986 and 2000 to levy a one-half (1/2) cent sales and use tax on purchases within the County to finance certain capital transportation and transit projects as set forth in the Expenditure Plans attached and incorporated by reference into this program. The measure authorized the creation of the Authority to administer the implementation of Measure B. A copy of both Measure B documents, including the Expenditure Plans, are available at the Authority's office and the website www.actia2022.com.

Mediator. A neutral third party assigned to assist adverse parties in resolving their disputes without going to court.

Pass-Through Funds. Measure B funds granted to Alameda County cities and other government agencies for their own projects and programs. This includes funds that are maintained with the Authority for future program services and grants.

Participation. Instance in which a Prime Contractor utilizes one or more LBEs or SLBEs to meet the Authority's LBE and SLBE subcontracting requirements, the Prime Contractor may only count towards its subcontracting goals those expenditures to LBEs and SLBEs firms that perform a Commercially Useful Function.

Prime Contractor. Any person(s), firm, partnership, corporation, or Joint Venture who submits a Bid to perform and/or enters into a Contract with a Sponsoring Agency or the Authority to perform Construction Work or professional services. Prime Contractors shall perform at least thirty percent (30%) of the Construction Work or professional services under the Contract.

Program Services. Services rendered to Alameda County residents under Measure B, paid through the Pass-Through Funds.

Procurement Process. Contracts over \$50,000 are subject to a competitive selection process, contracts between \$50,000 and \$25,000 require three to five competitive bids and contracts under \$25,000 require one bid. This process is described in Appendix G

Professional Services Contract. Any Contract between the Authority and a person or firm to provide labor, materials, or equipment for professional services including, but not limited to architects, engineering and construction-related services.

Small Local Business Enterprise (SLBE). An LBE with less than a stated amount of average gross annual revenue over the most recent three (3) years. For any business to qualify as an SLBE for non-construction contracts, it must have average annual gross revenue under \$5 million over the most recent 3 year period. For a business to qualify as an SLBE for construction contracts, it must have average annual gross revenues under \$10 million.

SLBE Goal. The targeted level of Participation for SLBEs established by the Authority for Contracts awarded by the Authority and Sponsoring Agencies, which are completely or partially funded by the Authority and other local funds. The Authority board shall approve the contract-specific SLBE Goal for each construction contract. The goals for professional and administrative contract over \$50,000, is 30%.

Sponsoring Agency. Any public entity receiving funds from Measure B, to implement capital projects, as defined in the Authority's 1986 and 2000 Measure B Expenditure Plans. The Expenditure Plans are available for review at the Authority's office or on the Authority's web page (www.actia2022.com). This Program shall only be applied to Contracts for capital projects awarded by the Sponsoring Agency which are completely or partially funded by the Authority and other local funds. Please refer to Appendix B for Responsibilities of Sponsoring Agencies.

Subcontractor. Any individual, partnership, corporation, or other legal entity entering into a contract with a Prime Contractor to perform a portion of the Construction Work or professional services under a Contract with the Authority or a Sponsoring Agency, including but not limited to truckers, manufacturers, suppliers and owner-operators of equipment.

Very Small Business Local Enterprise (VSLBE). An SLBE with gross revenues averaging less than \$2 million per year over the most recent 3 year period will be given preference on Authority administrative contracts under \$50,000. On administrative contracts under \$25,000, the Authority will target VSLBEs.

APPENDIX B

RESPONSIBILITIES OF SPONSORING AGENCIES

1. Advertise, award and administer any professional services contract for work on Measure B capital projects not performed by Sponsor's own forces.
2. Invite the Authority staff and/or consultants to participate as a voting member in the selection of professional consultants and to furnish copies of the professional services RFPs and contracts to Authority for review prior to approval by the Sponsor on contracts utilizing Authority funds.
3. Advertise, award and administer the construction and utility relocation contracts for Projects in accordance with the applicable requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. Sponsor shall obtain applicable wage rates from the State Department of Industrial Relations and shall adhere to the applicable provisions of the State Labor Code. Violations shall be reported to the State Department of Industrial Relations.
4. Comply with the Authority's Local Business Contract Equity Program when selecting all professional consultants and construction contractors on phases of Capital Projects funded by the Authority, where no federal or state funds are used, unless the Sponsor has received approval for the Waiver the Goals provisions or the use of Sponsor Participation Policy from the Authority.
5. Meet Authority's Goals when selecting all construction and utility relocation vendors on phases of the Projects where no federal or state funds are used. In the event that LBE or SLBE goals are not met, Sponsor will make a good faith effort and require contractors and vendors to use Good Faith Efforts using the process as set forth in this Program.
6. Utilize the Sponsor's DBE goal, plan, and policies if federal or state federalized funds are used on any phases of the Project.
7. Work with Authority to achieve the Authority's objectives and clarify the required participation goals in the specific agreement in the event that Sponsor is bound by other mandated contract participation requirements.
8. On Projects where Sponsor hires a consultant to administer a phase of the work funded by the Authority, Sponsor will provide the Authority with a list of prime and subcontractors showing tasks and dollar values, Progress Reports by Project phase, when requesting reimbursement or on a semi-annual basis, whichever ever comes first. These reports shall describe the current status of the Project, actions and eligible costs expended or incurred during the previous month, actions expected to be taken during the next month, an updated schedule with estimated completion, scope changes Project related issues, any unexpected legal, environmental, engineering or construction difficulties, notices of potential claim, DBE, SLBE and LBE participation from prime and first tier subconsultants/ subcontractors, and any additional relevant information requested by the Authority.

APPENDIX C

GOOD FAITH EFFORT FOR CONSTRUCTION CONTRACTS

It is the Authority's intent and policy to fulfill its goals for LBE and SLBE participation. If a bidder fails to meet the LBE or SLBE Goals, the Authority must determine whether the bidder made a good faith effort (GFE) to meet the LBE and SLBE Goals. Efforts that are merely pro forma shall not be deemed a Good Faith Effort. Documentation of the contractor's GFE shall be submitted with the bid documents, if the bid does not meet the LBE and/or SLBE goals.

1. **GOOD FAITH EFFORT CRITERIA.** A Prime Contractor shall provide documented evidence with their bid that it took the following actions in order to establish that it made a reasonable GFE to meet the Authority's LBE and SLBE Goals. The Prime Contractor's GFEs to reach out to LBEs and SLBEs shall be determined by the level of effort put into achieving the twelve (12) criteria as outlined below. Failure to meet LBE/SLBE/VSLBE goals will not by itself be the basis for disqualification or determination of non-compliance with the LBE/SLBE/VSLBE Program. However, failure to include supporting documentation of a GFE and failure to achieve 70 out of 100 Good Faith evaluation points will render the bid non-responsive and will result in its rejection.
 - (a) Attend pre-bid meetings scheduled by the Authority to inform all bidders of the LBE/SLBE/VSLBE Program requirements for the project for which the Contract will be awarded. The Authority must have a record of the Prime Contractor's sign-in on the attendance sheet. **GFE Points = 5**
 - (b) Identify specific items of work to be performed by LBEs and SLBEs in order to increase the likelihood of meeting the LBE and SLBE Goals, including breaking down contracts into constructible units. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate LBE and SLBE participation. The Prime Contractor must complete a Request for Potential LBE and SLBE Work Break-out Analysis, the format of which will be furnished by the Authority as part of the contract document. This Analysis will be used in determining if the Prime Contractor has met this specific GFE criterion. **GFE Points = 15**
 - (c) Provide written notice of interest and results in soliciting bids on the Contract to LBEs and SLBEs. Written notice shall specify which items of work the Prime Contractor has identified pursuant to Item 1b above. This notice shall be provided to LBEs and SLBEs within 5 calendar days after the pre-bid meeting or pursuant to the notice period set forth in the specifications for a given Contract. These solicitations shall include a description of the specific items of work to be performed by the LBEs and SLBEs and all related conditions of the work. The Prime Contractor

will also be required to provide written documentation of the LBEs' and SLBEs' responses to these solicitations, i.e. dates of written notice, response and results, phone logs, meetings, conference calls, etc., as well as records of discussions with LBEs and SLBEs regarding the solicitations. **GFE Points = 15**

- (d) Follow-up on the written initial solicitations of interest by contacting the owner or other manager of the LBEs and SLBEs to determine with certainty whether the enterprises were interested in performing specific items of the project. The Prime Contractor is required to document the follow-up activities and provide written documentation stating the date and method of contact, the reason for not using the subcontractor and copies of all communications. **GFE Points = 15**
- (e) Make the project plans, specifications, and requirements for the selected subcontracting or material supply work available for review by interested LBEs and SLBEs. The Primary Contractor is required to document and provide proof of receipt on the names and addresses of LBEs and SLBEs whom the project information was made available to. **GFE Points = 5**
- (f) Where needed, advise and make efforts to assist interested LBEs and SLBEs in obtaining lines of credit, or required insurance. **GFE Points = 5**
- (g) Negotiate in good faith with LBEs and SLBEs subcontractors. The Prime Contractor shall provide evidence that negotiations with LBEs and SLBEs were done in good faith by documenting and providing names and addresses of LBEs and SLBEs that were considered. To the extent that the Prime Contractor negotiated with the LBEs and SLBEs and did not select the LBEs and SLBEs for the work, the Prime Contractor shall provide written documentation detailing why the agreement could not be reached with the LBEs and SLBEs. **GFE Points = 25**
- (h) Contact the Authority, identifying the LBEs and SLBEs contacted and explaining any problems securing LBE and SLBE bidders and request assistance at least fifteen (15) working days prior to the bid due date. **GFE Points = 5**
- (i) Advertise, not less than twenty (20) working days before the date the Bids are opened, in one or more daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other media, that may be specified by the Authority to solicit LBEs and SLBEs that are interested in participating in the project. This paragraph applies only if the Authority gives public notice of the project not less than thirty (30) calendar days prior to the date the Bids are opened. **GFE Points = 5**

- (j) Documented assistance from contractors' groups or other organizations that provide assistance in the recruitment and placement of LBEs and SLBEs, if any are available. Documentation of this solicitation must be provided. **GFE Points = 5**

2. GOOD FAITH EFFORT REVIEW. The GFE Evaluation Process consists of a two-tiered review process:

- **Interdisciplinary Review Team:** The initial review/analysis of the GFE documents will be performed by the appropriate contract equity consultant. This initial report will be presented to the Interdisciplinary Review Team (IRT), nominated by the Executive Director, which determines if a GFE was demonstrated. A written evaluation report will be submitted to all bidders, stating whether the apparent low bidder has complied with the GFE requirements. To protest the IRT decision, a bidder has five working days to file a written objection. In the event a hearing is deemed appropriate by the Executive Director, all bidders shall be given at least a five day notice of the hearing. The IRT shall make its findings within 10 working days after the hearing. The IRT's decision may be appealed by the bidder or other interested parties, as defined in the bid document.
- **GFE Review Committee:** Review of a decision of the IRT that is appealed will be conducted by a Good Faith Effort Review Committee (Committee), which will be comprised of two (2) Authority Board members and an outside independent appointee. The two Authority Board members will be appointed by the Chair of the Authority Board. The outside independent appointee will be retained by the Authority Executive Director. The Committee shall hold a hearing in Alameda County. All Subcontractors listed on the Good Faith Report and all bidders and their subcontractors that participated in the bidding process will be given notice of the hearing at least ten (10) days before it takes place. The Committee will review evidence at the hearing and other factors relevant to the case to determine whether the apparent low bidder made a GFE to meet the LBE and SLBE Goals. The Committee shall review and keep confidential any information revealing a Prime Contractor's proprietary interests and shall exclude the public from the hearing for that limited purpose. The Committee shall give all bidders and all Subcontractors participating in bids on the project an opportunity to present evidence relating to the apparent low bidder's GFE to meet the LBE and SLBE Goals.

The Committee makes a final determination whether a GFE was demonstrated. The Authority or Sponsoring Agency will rely on the decision of the Committee, and the Authority will hold the Sponsoring Agency harmless for implementing the decision of the Committee.

APPENDIX D

OUTLINE OF CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACT PROCESS

A. Bidding Process for Construction Contracts

Distribution of Certified Lists. The Authority will make available a directory or list of certified LBE, SLBE and VSLBE Prime Contractors and subcontractors conducting business in Alameda County who are willing to perform types of subcontract work and provide materials generally required during construction. Current copies of the list will be made available by the Authority or Sponsoring Agency at the same time requests for Bids are distributed. Additionally, the list shall be made available to any individual, firm or organization upon request.

Pre-bid Conference. Not less than fifteen (15) days before Bids are due on each Contract subject to this Program; the Authority shall hold a pre-bid conference in Alameda County that invites all prospective Prime Contractors and Subcontractors including LBEs, SLBEs and VSLBEs. During the conference, the Authority will explain the Contract to be performed, the provisions of this Program, and the process for bidding. Available data on the LBEs, SLBEs and VSLBEs interested and/or capable of engaging in the prospective Contract shall be made available to prospective bidders, Prime Contractors and Subcontractors at the conference.

Solicitation of LBE and SLBE Bids. Prime Contractors shall notify local contractor associations and business development centers of their intention to solicit LBE, SLBE and VSLBE Participation in a Contract at least twenty (20) working days, prior to the Bid opening. Such notification shall be by registered or certified mail or other suitable means such as facsimile copy.

Bid Opening. Prime Contractors must submit a LBE, SLBE and VSLBE Utilization Form as applicable with their Bids. This form will identify the particular LBEs, SLBEs and VSLBEs to be utilized in performing the Construction Contract, specifying for each the dollar value of the Participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the Bid. This Form will be available for public review immediately upon submission.

Prime Contractors must submit with their Bid an Affidavit of Non-Disciplinary or Investigatory Action attesting that no adverse action has been taken against them by the Equal Opportunity Commission, State of California Department of Fair Employment and Housing or the U.S. Department of Labor Contract Compliance Program or provide an explanation for any such actions, except where legal action is pending.

Prime Contractors shall submit with their Bids a letter of intent signed by the Subcontractor or an executed contract for each Subcontractor who is included in the Bid.

Prime Contractors must submit a proposed draft copy of their contract with each Subcontractor that will be working on a project to the Authority or Sponsoring Agency within ten (10) days of

being notified that they have been awarded the Construction Contract and a copy of the executed contract with the Subcontractor prior to the commencement of Construction Work.

B. Professional Services Contracts: Submittal of Qualifications and Proposals

Consultants interested in Professional Services Contracts shall submit project specific qualification statements and proposals as prescribed by the Authority's "Policy on Selection Procedures for Procurement of Engineering and Related Professional Services" or as prescribed by the Authority or the Sponsoring Agency, with the Authority's approval, for the particular service required. Project Specific Qualification Statements shall include the plan in which a firm or team plans to meet the requirements of this Program. Therefore, although assignment of tasks is not required at this stage, firms wishing to be considered further must clearly establish the plan to comply with this Program.

Firms invited to propose (Prime Contractors) shall complete the Project's Consultant Team Form (see Appendix C). A Professional Services Questionnaire must also be completed by the Prime Contractors and each Subcontractor (see Appendix D). The Project Consultant Team Form-the Professional Services Questionnaire must be submitted at the time the Prime Contractor submits the project proposal to the Authority or the Sponsoring Agency.

APPENDIX E

LIST OF CERTIFYING AGENCIES

There are two ways to get certified with the Authority. First is the submission of a copy of the Common Application (used by most Alameda County agencies) and Supplemental Questionnaire for ACTIA as shown on the Authority website www.actia2022.com, to the Authority’s contract equity consultant. Second, provide the Authority’s contract equity consultant a copy of a valid certification from certifying agencies listed below plus the Supplemental Questionnaire where indicated.

Certification Matrix

Certifying Agency	LBE	SLBE	VSLBE
Port of Oakland	Copy of Port Certification *	Copy of Port Certification and Supplemental Questionnaire	Copy of Port VSBE Certification showing Alameda County Address
County of Alameda	Copy of County Certification *	Copy of County SLEB Certification and Supplemental Questionnaire	Copy of County SLEB Certification and Supplemental Questionnaire
City of Oakland	Copy of Oakland Certification *	Copy of Oakland Certification and Supplemental Questionnaire	Copy of Oakland Certification and Supplemental Questionnaire
If the business is not certified with agencies listed above	Common Application	Common Application and Supplemental Questionnaire	Common Application and Supplemental Questionnaire

*** Additional information may be required to determine if a business meets ACTIA criteria.**

APPENDIX F

CERTIFICATION APPLICATION AND SUPPLEMENTAL FORMS

APPENDIX G

SUMMARY OF PROCUREMENT POLICY

Authority Procurement Process

The Authority enters into contracts in three ways:

- Contracts exceeding \$50,000 require a formal Request-for-Proposal (RFP) process, and approval by the Authority Board.
- Contracts between \$25,000 and \$50,000 require solicitation of at least three competing bids solicitation, formal agreement with the successful bidder and approval by the Executive Director, under authority granted in the Procurement Policy adopted by the Authority.
- Contracts below \$25,000 require one informal quote, documentation of the contract, and approval by the Executive Director, under authority granted in the Procurement Policy adopted by the Authority.
- Construction contracts go through a formal process requiring competitive bids, which is outlined in Appendix D.

Roles and Responsibilities

- **The Authority Board.** Sets policy, reviews semi-annual compliance reports and approves contracts over \$50,000 administered by the Authority.
- **Executive Director.** Overall compliance with policy, liaison with the contracting community and developing and recommending policy improvements to the Board, and awards contracts under \$50,000.
- **Finance and Administration Manager.** Assist Executive Director in the compliance efforts, liaison and policy improvement recommendations.
- **Contract Equity Consultants.** Assists Authority Staff in the implementation of the Program.
- **Project Sponsors.** Implementation of the Program on applicable Authority funded projects.

APPENDIX H

RESPONSIBILITIES OF FINANCE AND ADMINISTRATION MANAGER

The Authority's Finance and Administration Manager is primarily responsible for implementing all aspects of the Program. The Finance and Administration Manager has direct, independent access to the Executive Director of the Authority concerning Program matters. The Finance and Administration Manager may be assisted by outside consulting firms. A list of the Finance and Administration Manager's responsibilities with respect to this Program can be found below.

The contact information for the Finance and Administration Manager is as follows:

Alameda County Transportation Authority and
Alameda County Transportation Improvement Authority
Finance and Administration Manager
1333 Broadway, Suite 300,
Oakland, CA 94612-4395
510-893-3347 x101
Aazad@actia2022.com

FINANCE AND ADMINISTRATION MANAGER'S RESPONSIBILITIES

The specific duties and responsibilities of the Finance and Administration Manager under this LBE/SLBE/VSLBE Program shall include, but not be limited to, the following:

- 1.** Analyzing and assessing the available resources and evidence for the establishment and achievement of overall annual Goals each year;
- 2.** Developing, monitoring and evaluating the Program, and preparing supplemental written procedures and guidelines to implement the Program;
- 3.** Maintaining and updating the Bidders List;
- 4.** Conducting measures to facilitate the participation of local and small business concerns through outreach and other community programs, training and business development programs, restructuring contracting opportunities, simplifying bonding, surety and insurance requirements;
- 5.** Participating in the Contract bid and award process, reviewing Contract specifications, attending pre-bid conferences and participating in the process of evaluating bids for contractor responsiveness, responsibility and GFEs;
- 6.** Ensuring that bid notices and requests for proposals are available to LBEs, SLBEs and VSLBEs in a timely manner;

- 7.** Monitoring specific Contract performance and actual participation and Contract payments;
- 8.** Monitoring overall participation, adjusting the overall Goals and means of achievement, assessing areas of over-concentration of participation, identifying ways to improve progress and reporting to the Authority as needed;
- 9.** Providing LBEs, SLBEs and VSLBEs with information and assistance in preparing bids, obtaining bonding and insurance;
- 10.** Planning and participating in LBE, SLBE and VSLBE training seminars;
- 11.** Providing outreach to LBEs, SLBEs and VSLBEs and community organizations to advise them of opportunities; and
- 12.** Maintaining all appropriate records and documentation of the Program, including gathering and reporting statistical data and other

APPENDIX I

PROJECT TEAM DISCLOSURE STATEMENT

Names of all Firms Participating on the Project (incl. Prime and Subconsultants)	Check if Firm is:		Nature of Participation	Percent of Project Work
	LBE	SLBE		

Name - Authorized Officer of Prime Consultant Firm (Print or Type)

Signature - Authorized Officer of Prime Consultant Firm

(Submit with Proposal)

|

