

# VENTURA COUNTY TRANSPORTATION COMMISSION

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## *DISADVANTAGED BUSINESS ENTERPRISE PROGRAM*

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## **POLICY STATEMENT (26.1, 23.23)**

The Ventura County Transportation Commission (VCTC) is committed to encouraging involvement of Disadvantaged Business Enterprise (DBE) and firms in all aspects of contracting involvement in all phases of VCTC's procurement activities, including, but not limited to, fixed-price contracts, regular purchases of goods and services, and special government grant procurement to the maximum extent feasible. VCTC has established a Disadvantaged Business Enterprise Program (DBE Program) in accordance with regulations of the US Department of Transportation, and as a condition of receiving this assistance, VCTC has signed an assurance that it will comply with 49 CFR Part 26. The text and references in this document (26.1 - 26.85) refer to the sections and in 49 CFR Part 26.

It is the policy of VCTC to ensure that DBEs defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. VCTC's policy objectives are as follows:

1. Ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

Pursuant to this Program, VCTC may establish appropriate contract goals for expenditures on federally funded programs entered into with small business concerns owned and controlled by socially and economically disadvantaged individuals; provided, however, that it has first made a determination, on an annual basis, that its overall goals for DBE participation in DOT-assisted projects cannot be met through the use of race neutral means.

All requests for information and/or assistance should be directed to VCTC's Executive Director, Darren Kettle, who is the DBE Liaison Officer. The Executive Director shall have full authority for the implementation and administration of this program.

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Darren Kettle  
Executive Director

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

## SUBPART A – GENERAL REQUIREMENTS

### 1. APPLICABILITY (26.3)

VCTC is the recipient of federal transit funds authorized under Titles I, III, and VI of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), or by federal transit laws in Title 49.

### 2. DEFINITIONS (26.5)

Any terms used in this Program that are defined in 49 CFR 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

**Disadvantaged Business Enterprise (DBE)** (Section 26.5) A DBE is a for-profit, small business concern; 1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Race-Conscious** (Section 26.5) A race-conscious measure or program is one that is focused specifically on assisting only DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program.

**Race-Neutral** (Section 26.5) A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small business, not just DBEs. For purposes here, race-neutral includes gender neutrality.

**Small Business Enterprise (SBE)** (Section 26.5) A small business enterprise is an existing small business, as defined by Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three (3) years does not exceed \$16.6 million (or as adjusted for inflation by the Secretary of U.S. DOT) pursuant to 49 CFR 26.65(b).

**Socially and Economically Disadvantaged Individuals** (Section 26.5) There is a rebuttable presumption that an individual is both socially and economically disadvantaged if s/he is a citizen or lawfully admitted permanent resident of the United States and is:

- Black American (including persons having origins in any of the Black racial groups of Africa);
- Hispanic American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);
- Native American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);

- Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Tuvalu, Kiribati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam;
- Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);
- A woman; or
- A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

Additionally, any individual can demonstrate, by a preponderance of evidence, that s/he is socially and economically disadvantaged on a case-by-case basis. MST will follow the guidelines in 49 CFR Part 26, Appendix E.

An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if s/he has a personal net worth exceeding \$750,000 (excluding the individual's ownership interests in the small business concern and his or her primary residence).

### **3. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (26.13)**

VCTC has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

*VCTC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to VCTC of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).*

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **1. DBE LIASON OFFICER (DBELO) (26.25)**

Darren Kettle, the VCTC Executive Director, shall serve as the DBE Liaison Officer (DBELO) who shall develop, manage and implement the Program on a day-to-day basis, provide DBEs with technical assistance, and disseminate information on available business opportunities so that DBEs will be provided an equitable opportunity to bid on VCTC-administered contracts. The Executive Director shall have full authority for the implementation and administration of this program, including efforts to contact and assist DBEs, maintain a close working relationship with local DBE affiliates, and to develop information and recommendations in the development of bid packages and procurement plans.

The Executive Director's duties and responsibilities as the DBE Liaison Officer shall be responsible for implementing all aspects of the Program in accordance with applicable Federal, state and local laws and regulations and include the following:

- a. Gathering and reporting of statistical data and other information as required by FTA;
- b. Review of third party contracts and purchase requisitions for compliance; establishment of the overall triennial DBE goal;
- c. Ensuring that bid notices and RFPs are available to DBEs in a timely manner;
- d. Identifying contracts and procurements for race neutral and contract-specific goals, and monitoring of results;
- e. Analyzing progress toward goal attainment and identification of ways to improve progress;
- f. Ensuring that qualified staff participates in pre-bid meetings;
- g. Advising the VCTC Board on DBE matters and achievement;
- h. Working with legal counsel and project manager to determine contractor compliance; Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance; and
- i. Initiating outreach to DBEs and community organizations to advise them on opportunities.

He or she shall assign such staff as is necessary to fully implement this policy. Peter De Haan, Director of Transportation Programming and Grants, has been assigned to assist the Executive Director as necessary in the development of the annual goal and reporting on its attainment.

He or she shall have responsibility for monitoring Program compliance, which monitoring duties are set forth in greater detail in Section 7 of Subpart B below.

VCTC utilizes the Caltrans certification process in lieu of maintaining its own certification process. Accordingly, appeals for reconsideration shall be addressed to Janice Salais, Chief of Certification Unit, as provided in the Caltrans DBE program. This Caltrans office evaluates and decides issues raised in requests for reconsideration of Caltrans DBE certification decisions.

## 2. DBE FINANCIAL INSTITUTIONS (26.27)

VCTC shall investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the Ventura County area and shall make reasonable efforts to use these institutions in connection with the DOT-assisted projects. In order to determine eligible DBE financial institutions, VCTC may use the investigations and determinations of other relevant public entities receiving DOT assistance. Additionally, VCTC shall encourage its prime contractors on DOT-assisted projects to use such financial institutions.

A list of financial institutions was obtained from the State of California, Department of General Services, Office of Small Business Certification and Resources, and the website for The Federal Reserve Board <http://www.federalreserve.gov/releases/mob/> to identify minority-owned banks derived from the Consolidated Reports of Condition and income filed quarterly by banks (FFIEC 031 through 034) The DBELO will continue to use these sources to continue to solicit minority-owned banks to participate in the VCTC's DBE Program. To date, the DBELO has identified the following minority-owned financial institutions, which offer services nearest to the Ventura County area in Los Angeles, California:

Community Commerce Bank  
Eastern International Bank  
Pan America Bank  
Premier Business Bank  
ProAmerica Bank  
Saehan Bank

## 3. PROMPT PAYMENT PROVISIONS (26.29)

VCTC requires that its contracts with prime contractors and prime contractor/subcontractor contracting shall include the following provisions:

a. Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement or payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction, and other remedies of that Section. This requirement shall not be construed to or limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

b. Prompt Payment of Withheld Funds to Subcontractors

Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 3-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the

agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

#### **4. DBE DIRECTORY (26.25)**

VCTC primarily utilizes Caltrans directory of Certified DBE Firms available at [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm). Bidders shall be informed of Caltrans Supportive Service Assistance Center.

VCTC maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory can be accessed by requesting a copy from the DBELO.

#### **5. OVER CONCENTRATION OF DBEs (26.33)**

If VCTC determines there is an over concentration of DBE firms in a particular type of activity or work unduly burdening non-DBE firms from access to the activity or type of work, it shall take appropriate steps, including, but not limited to, providing incentives, technical assistance, mentor programs, and other actions in order to assist DBE firms transition to other VCTC activities or work areas.

VCTC shall obtain the DOT's approval prior to implementing any remedial action devised to correct an over concentration of DBE firms in a particular activity or work. When approved by the DOT, any such remedial action taken regarding DBE over concentration shall become a part of this DBE Program.

#### **6. BUSINESS DEVELOPMENT AND MENTOR-PROTÉGÉ PROGRAMS (26.35)**

Where necessary to solicit ready, willing and able DBEs or to ensure that an over concentration of DBEs does not exist in any type or activity of work, VCTC may, at its discretion, implement business development and/or mentor-protégé programs for DBEs. Additionally, where directed to do so by the DOT or other appropriate operating administration, VCTC shall implement such programs. These programs shall assist DBEs develop business skills and experience in areas related to the services required by the VCTC. Any such programs implemented by VCTC shall comply with the federal guidelines set forth in Appendices C and D to 49 CFR Part 26.

## 7. SMALL BUSINESS PARTICIPATION (23.39)

In accordance with the requirements of 49 CFR Part 26, Section 23.39, VCTC has a Small Business Program to ensure that DBEs and non-DBE small businesses have a maximum opportunity to participate on federal-aid projects.

The intent of the Small Business Participation Program is to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation. As with the remainder of VCTC's DBE program, this Small Business Participation Program applies to FTA-funded procurements related to VCTC's functions as the regional transportation planning agency for Ventura County, procurements by VCTC as the operator of the VISTA transit system, and procurements by VCTC's subrecipients which include transit operators, local jurisdictions implementing transit-related capital improvements, and non-profit organizations receiving Jobs Access I Reverse Commute and Elderly and Disabled funds.

For purposes of fostering Small Business utilization, VCTC adheres to the U.S. Department of Transportation's Small Business definition for what constitutes a Small Business Enterprise as follows:

A Small Business is one that:

- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the U.S. economy by paying taxes or using American products, materials, or labor; and
- Does not exceed the numerical Size Standard for its industry (*see table below*)

| INDUSTRY GROUP                                                  | STANDARD SIZE  |
|-----------------------------------------------------------------|----------------|
| Manufacturing                                                   | 500 employees  |
| Wholesale Trade                                                 | 100 employees  |
| Retail Trade                                                    | \$7 million    |
| General & Heavy Construction                                    | \$33.5 million |
| Dredging                                                        | \$20 million   |
| Special Trade Construction Contractors                          | \$14 million   |
| Business & Personal Services (except A&E, Surveying and Mapping | \$7 million    |
| Computer Programming, data processing & systems design          | \$25 million   |

This Small Business Enterprise Program will include, but is not limited to the following assertive strategies:

- a. VCTC's Grant Administration staff will continue to conduct regular reviews of VCTC and subrecipient procurements, to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). In particular, recognizing the vast majority of VCTC and subrecipient procurements are for transit operations contracts, consideration will be given for any operations contract procurement involving 20 or more buses not maintained in a city-owned facility, to allow consideration of bids for portions of the contracted service.
- b. VCTC Grant Administration staff will ensure VCTC and subrecipient vendor lists used for FTA-funded procurements identify Small Businesses who wish to participate in such

procurements by providing their services and/or capabilities to prime contractors. This allows prime contractors who are looking for subcontractors to request from the list, Small Business Firms' interest and specializations. This strategy greatly enhances the use of Small Businesses and provides a tool for future partnerships between VCTC's prime and Small Business communities.

- c. VCTC will make every effort to provide notices of procurements in various industry publications, to the degree feasible based on cost considerations. These media will provide additional tools and resources to promote and strengthen competitiveness, marketability and participation of small businesses, minority and women-owned firms within the contracting programs of VCTC and its subrecipients.
- d. VCTC will for Small Businesses employ the same race-neutral measures it uses with DBEs to facilitate participation. These strategies include, but are not limited to, arranging solicitations to facilitate small business participation; assisting, as necessary, during the procurement process to overcome limitations; and assisting as appropriate with management and accounting practices.

VCTC will actively implement the Small Business Participation program to foster small business participation as a requirement of good faith implementation of VCTC's DBE program.

## **8. MONITORING AND ENFORCEMENT MECHANISMS (26.37)**

The Liaison Officer shall be responsible for monitoring all aspects of the DBE Program, including ensuring that all prime contractors and subcontractors on DOT-assisted projects are applying, where necessary, the legal remedies set forth in 49 CFR Section 26.29 and under state and local law. Additionally, the Liaison Officer, or his or her designee, shall ensure that DBEs submit all required documentation verifying the work actually performed by DBEs on projects receiving DOT-assistance. To this end, the Liaison Officer, or his or her designee, must obtain and tabulate payments made to DBE firms (both prime contractors and subcontractors on DOT-assisted projects) on all VCTC projects receiving DOT assistance. No credit toward overall or contract goals shall be given unless and until the Liaison Officer, or his or her designee, has confirmed that payment on a DOT-assisted project has been actually made to a DBE certified firm or individual.

### **a. Bidders' List**

VCTC will maintain a list of all firms bidding on prime contracts or subcontracts on DOT funded project. This list must contain the following information:

- Firm name;
- Address;
- Firm's DBE or non-DBE status;
- Age of firm; and
- Annual gross receipts.

**b. Monitoring Payments to DBEs**

VCTC employs a record keeping system which will facilitate the monitoring of the DBE Program. This system provides necessary data for PTA compliance reviews and uniform reporting requirements. Specifically, VCTC shall maintain records on the following:

- i. Procedures which have been adopted to implement this Program, including technical assistance efforts and referral and communication procedures.
- ii. Contracts awarded to DBEs, including name of firm, nature of work, total value of the contract and/or subcontract and the overall percentage of DBE awards.
- iii. Specific efforts to identify and award contracts to DBEs including the number and names of firms contacted and invited to bid on a contract, the number of names of DBEs responding and the publications in which the contract procurement was advertised.
- iv. Payments made by Prime Contractors to DBE subcontractors.
- v. All documentation related to the meeting of overall DBE goals through race neutral means and contract goals. Data related to race neutral and contract goals DBE program achievements shall be kept and recorded separately.

**c. Reporting Requirements**

VCTC shall make all necessary reports to the DOT, or other administering agency, as required by law. VCTC shall submit its annual DBE Program goals to the DOT, or other administrative agency, on the scheduled required by law.

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

### **1. SET-ASIDES OR QUOTAS (26.43)**

This Program does not establish DBE quotas or set-asides for VCTC contracts.

### **2. OVERALL GOALS AND METHOD (26.45)**

VCTC shall triennially set overall DBE Program goals for DOT-assisted projects in accordance with the provisions of 49 C.F.R. Section 26.45. A description of the methodology to calculate the overall goal and goal calculations can be found in Attachment A. This attachment shall be updated triennially.

In accordance with 49 CFR Section 26.45 (f), VCTC will submit its overall goal to DOT on August 1<sup>st</sup> of every third year. The methodology used for establishing the annual DBE goal is consistent with those identified in 49 CFR Section 26.45.

The VCTC's overall annual goal is an expressed percentage of the total amount of DOT funds the VCTC anticipated expending during the fiscal year. The VCTC's annual overall goal is reflective of the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the VCTC would expect to achieve absent the effects of discrimination. VCTC intends to meet the annual overall goal, to the maximum extent feasible, through race-neutral measures as outlined further in this policy.

### **3. DBE ELIGIBILITY (23.xx)**

The DBE Liaison Officer shall, where required, ensure that DBE firms listed by the contractor for participation in contract work are certified as eligible DBE firms. VCTC may accept any of the following as evidence of DBE eligibility:

- a. Certifications made by other recipients of DOT funding, especially determinations by a participating state or local agency whose certification criteria complies with 49 CFR Parts 23 and 26;
- b. Certifications made by a participating state or local agency as valid status of that enterprise, with respect to the identities of the persons certified as having ownership and control of the business enterprise;
- c. DBE's listed in the Caltrans' computerized data bank;
- d. Certifications approved by members of the Southern California Regional Reciprocity Council; and
- e. DBE's listed in the UCP Directory, when implemented.

VCTC shall require all prime contractors to make good faith efforts to replace any DBE subcontractor that is unable to perform successfully with another DBE subcontractor. In order to ensure that a particular substitute firm is an eligible DBE, all such substitutions of subcontractors must be approved by VCTC before bid opening and/or as soon as possible during contract performance.

#### **4. RACE NEUTRAL MEANS (26.51)**

This Program reflects a good faith effort on VCTC's part to support DBE firms that are ready, willing, and enable to carry out work on its behalf. Under no circumstances shall VCTC exclude any person or firm from participation, deny any person or firm the benefits of, or otherwise discriminate against any person or firm on the basis of race, color, sex or national origin. To that end, VCTC is committed to race neutral means of ensuring that DBEs may become eligible for future contracting with VCTC. Specifically, VCTC is committed to the following race-neutral means of facilitating DBE participation:

- a. Arranging solicitations, time of bids, quantities, etc. to facilitate DBE and other small business participation.
- b. Assisting, as necessary, during the procurement process to overcome limitations.
- c. Providing technical assistance and other services.
- d. Providing easy access to contracting opportunities.
- e. Assisting as appropriate with management and accounting practices.
- f. Working as necessary to help DBEs and small businesses achieve their long-term development goals.
- g. Assisting new start-up firms as appropriate.
- h. Assisting with distribution of Caltrans DBE directory to potential DBE contractors.
- i. Assisting DBEs and small businesses to develop their capability to utilize emerging technology and electronic media.

In addition, VCTC is committed to employing community outreach efforts, as set forth in Section 9 of Subpart C below, prompt payment and other contract provisions, and other appropriate race neutral means, to ensure access to its DOT-assisted contracting and services agreements in a non-discriminatory manner.

Only after it makes a determination, on an annual basis, that its overall goal for DBE participation in its DOT-assisted project cannot be reached through race neutral means, shall VCTC establish DBE contract goals for the year.

## 5. CONTRACT GOALS (26.51)

VCTC shall set annual overall DBE Program goals every three years. The overall DBE goals shall be based on demonstrable evidence of the availability of DBEs relative to all businesses ready, willing and able to participate in VCTC's DOT-assisted contracts and shall reflect VCTC's determination of the level of DBE participation absent the effects of discrimination in its jurisdiction. VCTC shall also determine the extent to which the race neutral means may achieve its overall DBE Program goals. VCTC shall use race neutral means to meet its overall DBE Program goals to the maximum extent feasible.

VCTC shall submit its overall DBE Program goals and the analysis used to calculate them to FTA or FWHA, and/or, where VCTC is a subrecipient, to the primary recipient of DOT funding, as required. When VCTC submits its overall DBE goals, VCTC shall publish a public notice, announcing these goals and describing how they were selected which shall be available for public review during normal business hours for a 30 day period. The announcement shall also inform the public that FTA and/or the primary recipient and VCTC will accept comments on the goals for a period of 45 day period. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media, available for minority-focus media, and trade association publications, and shall state that the comments are for informational purposes only.

Where VCTC has made a determination, on an annual basis, that race neutral means are insufficient to meet its overall DBE Program goals, it shall implement DBE contract goals for that year. Where necessary, the following rules and criteria shall be used by VCTC when implementing DBE participation contract goals for its DOT-assisted projects:

- a. Contract goals need not be stated in the Program, but the Program shall contain a description of the methodology to be used in establishing them. Contract goals may, however, require approval by FTA and/or the primary recipient prior to contract solicitation. Contract goals will provide for participation by all DBEs and will not be subdivided into group specific goals.
- b. VCTC may set goals for specific contracts that may be higher or lower than its overall DBE goals, depending on the type of work involved, the location of the work and the available of DBEs for the work on the particular contract. Additionally, if, during the course of a fiscal year, VCTC determines that it will fall short of its overall DBE goal for that year, VCTC may make appropriate modifications to its contract goals.
- c. If, during the course of a fiscal year, VCTC determines that through the implementation of its contract goals it has met its overall DBE goals for that year, it shall reduce or eliminate its contract goals to the extent necessary.
- d. If VCTC has obtained DBE participation that exceeds its overall DBE goals for two consecutive fiscal years, it shall reduce its contract goals for the next fiscal year accordingly. Additionally, if VCTC has met its overall DBE goals through race neutral means for two consecutive years, it will continue to use race neutral means and not set contract goals until such time that it has not meet its overall DBE goals for a fiscal year.

## 6. GOOD FAITH EFFORTS IN CONTRACT PROVISIONS (26.53)

For all projects for which contract goals have been established, VCTC will include, in the procurement document a statement that the apparently successful competitor must submit the following DBE information, and that submittal of this information will be considered a matter of responsiveness:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work each named DBE firm will perform;
- c. The dollar amount of participation by each named DBE firm;
- d. Written documentation of the bidder's commitment to use the DBE subcontractor(s) it has submitted with its bid; and
- e. Written confirmation from the DBE that it is participating in the contract in accordance with the bidder's commitment to it.

VCTC may select the time for submission of DBE information, provided that the times of submission time shall be before VCTC commits itself to the performance of the contract by the apparent successful competitor.

Upon receipt of the required DBE information, and prior to contract award, VCTC will check all information for completeness and accuracy. Should a decision be made that the proposer has not complied with VCTC's DBE policy, VCTC will inform the proposer of the process for reconsideration of DBE status determination.

If the DBE participation submitted does not meet the DBE Program goals, the apparent successful competitor shall satisfy VCTC that the competitor has made good faith efforts to meet the goals, as set forth below.

Meeting DBE goals or making good faith efforts or meeting VCTC's DBE participation goals is a condition of receiving a FTA assisted contract.

In all contracts for which DBE goals were established, VCTC shall include language stipulating the following:

- a. The prime contractor will not terminate for convenience a DBE contractor listed in response to this policy, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent of VCTC.
- b. Should a DBE subcontractor be terminated or fail to complete its work for any reason, the contractor must make good faith efforts to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.
- c. Should the contractor fail to comply with the DBE provisions of the contract, then VCTC may impose contract sanctions as it determines to be appropriate, including, but not limited to, "withholding of payments under the contract until the contractor complies; and/or cancellation, termination, or suspension of the contract, in whole or in part.

## **7. BIDDERS FAILING TO ACHIEVE DBE GOALS (26.55)**

Bidders who fail to achieve specified DBE contract goals (where required) shall submit, within 3 days after the request of the DBE Liaison Officer, documentation demonstrating that good faith efforts were exerted in an attempt to meet such goals, and explaining why the goal could not be achieved and why meeting the goal was beyond the contractor's control. Should VCTC make a determination that the bidder failed to make good faith efforts to reach required DBE goals, the bidder may request an Administrative reconsideration.

Good faith efforts may include, but are not necessarily limited to, the following activities:

- a. Attendance at any pre-bid meeting as may be scheduled by VCTC to inform prospective contractors and DBEs of subcontracting opportunities for the subject project
- b. Identify portions of the work to be performed by subcontractors in which DBEs may participate.
- c. Advertise in general circulation media, trade association's publications, and/or disadvantaged focus media identifying specific subcontracting opportunities.
- d. Solicit through all reasonable and available means within a reasonable time frame the interest of all DBEs which have the capacity to perform the work on the contract.
- e. Provide interested DBE subcontractors with adequate information about the plans, specifications and requirements of the contract.
- f. Negotiate in good faith with interested DBEs and not reject them as unqualified without sound reasons based on a thorough investigation of their capabilities.
- g. Assist interested DBEs in obtaining bonding, lines of credit, or insurance required by VCTC or the contractor.
- h. Use of the services of available DBE community organizations, disadvantaged contractor groups, local, state and federal DBE offices and other organizations that provide assistance in the recruitment and placement of DBEs.
- i. Make efforts to assist interested DBEs obtain necessary equipment, supplies, materials, or services.
- j. Any other means of making good faith efforts set forth in Appendix A to 49 CFR part 26.

If the bidder/contractor does not make the explanation required above, or VCTC determines that the explanation does not justify the failure to meet the applicable goal, VCTC may direct the bidder/contractor to take appropriate remedial action. Failure to do so shall be deemed a material breach of any contract or agreement or grounds for disqualifying the bid.

If the contractor executes an agreement with a subcontractor which it reasonably believes may be considered a DBE, the contractor shall continue to receive credit for the work actually performed by the subcontractor, even after VCTC makes a determination that the subcontractor is not eligible for DBE certification. However, that portion of the subcontractor's work actually performed after VCTC makes a determination that the subcontractor is not eligible for DBE certification may not be counted toward VCTC's overall DBE Program goals.

## **8. COUNTING DBE PARTICIPATION (26.55)**

Once a firm has been certified by Cal-DOT or other appropriate recipient of DOT-assistance as a bona fide DBE, the total dollar value of the work actually performed by the DBE may be counted toward the Program goal, provided the DBE performs a commercially useful function. In

determining what proportion of the expenditure shall be applied towards the DBE goal, the criteria set forth in 49 CFR Section 26.55 and the following shall apply:

- a. The total dollar amount of the contract actually performed by a DBE or a subcontractor who is a DBE.
- b. When a DBE performs work for VCTC as part of a joint venture, the total dollar amount equal to the distinct, clearly defined portion of the work carried out on the contract by the DBE may be counted towards the DBE goal.
- c. Only 60% of the expenditures for materials and supplies required under the contract and obtained from regular dealers who are DBEs, as defined in 49 C.F.R. Section 26.55, may be counted toward the award goals if the vendor is not the manufacturer. 100% of such expenditures may be counted if the DBE manufacturer is the manufacturer.
- d. If the DBE is not a manufacturer or a regular dealer, the following fees and/or commissions may be counted, provided that the fee and/or commission is not unreasonable or excessive as determined by VCTC as judged in comparison with customary fees for similar services:
  - i. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the contract may be counted.
  - ii. The fees charged for delivery of materials and supplies required on the job site (but not the cost of the materials and supplies) when the hauler, trucker or delivery service is not also the manufacturer or a regular dealer in the materials and supplies.
  - iii. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract.

No prime contractor may terminate for convenience any DBE subcontractor listed in its bid and perform the work with its own forces or those of an affiliate without VCTC's prior written approval.

## **9. PUBLIC PARTICIPATION AND OUTREACH**

- a. Advertisement of Notice to Bidders  
VCTC, in addition to any advertising required by law for construction bids, will provide bid information to the following:
  - i. Local and regional DBE focused publications, containing project description, pre-bid meeting date, bid opening date and a notice to disadvantaged contractors and/or subcontractors indicating that they may obtain lists of prospective contractors as well as contract specifications from VCTC.
  - ii. Disadvantaged contractors and/or subcontractors who are identified as firms that may render the necessary construction activity.

- iii. The following disadvantaged oriented contractor associations:
  - Minority Contractors Association
  - Ventura County Contractors Association
  - American Subcontractors Association and
  - Southern California Minority Supplier Development Council
- b. Pre-bid Conference

The contract specifications for construction projects shall designate the time, date, and place for the pre-bid conferences, if any. Prospective contractors shall be provided with an opportunity to identify their subcontracting requirements. In addition, the conditions of this policy and other equal employment requirements, project details and bidding procedures shall be discussed.
- c. Outreach Techniques

VCTC employs various outreach techniques designed to facilitate achievement of the Program goals. Such techniques may include, but may not be limited to:

  - i. Simplifying bid packages and requests for proposals so as to increase prospective DBE participation;
  - ii. Providing assistance to DBEs in overcoming barriers such as the inability to obtain funding, financing or technical assistance;

## **SUBPART D – CERTIFICATION STANDARDS**

### **1. STATEMENT OF NON-DISCRIMINATION (26.61)**

VCTC requires that each financial assisted agreement it signs shall include the following statement:

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

VCTC requires that its contracts with prime contractors and prime contractor subcontractors contracts shall include the following provision:

*"The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."*

### **2. LEGAL REMEDIES (26.61)**

VCTC requires that its contracts with prime contractors and prime contractor/subcontractor contracting shall include the following provision:

*"In addition to those contract remedies set forth under relevant provisions of California law, either party to this Agreement may, where applicable, seek legal redress for violations of this Agreement pursuant to relevant provisions of 49 C.F.R. Parts 23 and 26, to relevant federal or state statutory provisions governing civil rights violations, and to relevant federal and state provisions governing false claims or 'whistle blower' actions, as well as any and all other applicable federal and state provisions of law."*

### **3. ADMINISTRATIVE REMEDIES (26.61)**

VCTC requires that its contracts with prime contractors contain the following provision:

"CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE program shall

be considered a material breach of this AGREEMENT and may give rise to certain administrative penalties and proceedings, including, but not limited to, those set forth in 49 C.F.R. Part 26.107."

#### **4. DBE PROGRAM COMPLIANCE (26.73)**

VCTC requires that its contracts with prime contractors and prime contractor/subcontractor contracting shall include the following provision:

*"VCTC has established a DBE Program pursuant to 49 C.F.R. Part 26, which applies to this Agreement. The requirements and procedures of VCTC's DBE Program are hereby incorporated by reference into this Agreement. Failure by any party to this Agreement to carry out VCTC's DBE Program procedures and requirements or applicable requirements of 49 C.F.R. Part 26 shall be considered a material breach of this Agreement, and may be grounds for termination of this Agreement).t, or such other appropriate administrative remedy. Each party to this Agreement shall ensure that compliance with VCTC's DBE Program shall be included in any and all sub-agreements entered into which arise out of or are related to this Agreement."*

## **SUBPART E – CERTIFICATION PROCEDURES**

### **1. UNIFIED CERTIFICATION PROGRAM (26.81)**

VCTC entered into an agreement with other DOT funding recipients in California in order to establish a Unified Compliance Program ("UCP"), which shall establish a list of firms that have received state-wide DBE certification. VCTC intends to adopt the UCP Directory, when implemented, to establish its DBE Program eligibility.

### **2. INITIAL CERTIFICATION PROGRAM (26.85)**

Until it has entered a UCP agreement, VCTC shall recognize the certification of Caltrans or of any of the other entities listed in Section 9 of Subpart C above.

## **Attachment A - Calculation of VCTC Annual DBE Goal for Federally-Funded Projects**

*October 1, 2012 - September 30, 2015 Fiscal Years - (Adopted by VCTC 6/1/12)*

### **INTRODUCTION**

In accordance with 49 CFR Section 26.45, Ventura County Transportation Commission ("VCTC") has established an annual overall goal of 0.4% for three fiscal years extending from October 1, 2012 to September 30, 2015 for the participation of DBEs in all budgeted contracts utilizing Federal Transit Administration financial assistance. The goal was adopted by VCTC on June 1, 2012. The methodology used for establishing the annual DBE goal is consistent with those identified in 49 CFR Section 26.45.

The VCTC's overall annual goal is an expressed percentage of the total amount of DOT funds the VCTC anticipated expending during the fiscal year. The VCTC's annual overall goal is reflective of the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the VCTC would expect to achieve absent the effects of discrimination. The VCTC intends to meet the annual overall goal, to the maximum extent feasible, through race-neutral measures as outlined further in this report.

### **PROJECTION OF FEDERALLY-FUNDED CONTRACT EXPENDITURES**

The VCTC conducted a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be funded, in whole or in part, by DOT federal financial assistance during the next fiscal year, which extends from October 1, 2012 through September 30, 2015. The analysis revealed that most of VCTC's projected Federally-funded expenditures will fall under the category of Bus Operations, with the categories broken down as follows. All of these funds will be received from the Federal Transit Administration (FTA).

|                                   |                     |
|-----------------------------------|---------------------|
| Construction / Equipment          | \$ 2,106,000        |
| Planning / Design                 | \$ 848,000          |
| Other (Bus Operations and Leases) | \$ 8,360,000        |
| <b>Total</b>                      | <b>\$11,314,000</b> |

### **ESTABLISHMENT OF THE BASE FIGURE**

The NAICS codes were used to determine and define the available construction businesses in the geographical market areas. Construction firms are found under NAICS 23. An analysis of the U.S. Census Bureau 2009 County Business Patterns for Ventura, Los Angeles, and Santa Barbara Counties, indicates a total of 16,659 of Construction firms in the area.

Consultant firms are found under NAICS code 54. An analysis of the U.S. Census Bureau 2009 County Business Patterns for Ventura, Los Angeles, and Santa Barbara Counties indicates a total of 34,724 consultant firms in the geographical market areas.

The NAICS codes 485111 Mixed Mode Transit Systems, 485113 Bus and Other Motor Vehicle Transit Systems, and 4855 Charter Bus were used to determine the number of available transit operations businesses in the geographical market areas. The U.S. Census Bureau 2009 County Business Patterns for Ventura, Los Angeles, and Santa Barbara Counties indicates a total of 119 of these firms.

### **Available DBEs in the VCTC's Relevant Contracting Markets**

VCTC conducted a similar analysis to determine the DBEs that are available to participate as contractors and subcontractors in the projected contracts for fiscal year October 1, 2011 – September 30, 2012. The same geographical boundaries that were used above were also used to determine and define the available DBEs along with the relative NAICS codes. Under the California Unified Certification Program (UCP), VCTC accepts DBEs contained in the Caltrans database, which are certified by one of the certifying agencies for VCTC's region, namely the City of Los Angeles, the Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, and the Orange County Aviation Department. Therefore, the UCP certified directory produced by Caltrans was used as the primary source for the identification of DBEs in the related NAICS codes. VCTC conducted a comparative analysis of these codes for construction and found a total of 217 DBE firms in all of the codes falling under NAICS 23 (Construction).

VCTC conducted a similar analysis to determine the DBEs that are available in Ventura, Los Angeles, and Santa Barbara Counties for transportation consulting for fiscal year October 1, 2011 to September 30, 2012. For professional services in all codes falling under 54 (Consultants), a total of 489 firms were found.

For DBEs that are available in the service area for transportation operations for fiscal year October 1, 2011 to September 30, 2012, VCTC conducted a similar analysis for the following NAICS codes: 485111 (Mixed Mode Transit Systems), 485113 (Bus and Other Motor Vehicle Transit Systems), and 4855 (Charter Bus). A total of 1 DBE firm was found under these NAICS codes in VCTC's market area.

### **Calculation of Goal**

Based on the information provided above, VCTC has arrived at the following percentage comparing the available DBEs in the relevant contracting markets for 2009 to the available businesses in the relevant contracting markets for the same period:

$$0.18614 \frac{217 \text{ DBEs for NAICS 23}}{16,659 \text{ firms in NAICS 23}} + 0.074950 \frac{489 \text{ DBEs in NAICS 54}}{34,724 \text{ firms in NAICS 54}} + 0.73891 \frac{1 \text{ DBEs in NAICS 485111, 485113, 4855}}{119 \text{ firms in NAICS 485111, 485113, 4855}} = .9689\%$$

### **Adjustment of Base Figure**

VCTC conducted a review of DBE goals for other nearby FTA funded agencies, including the Southern California Regional Rail Authority (SCRRA) and the Santa Barbara Metropolitan Transit District. VCTC also reviewed its bid history for bus operations contracts which comprise most of its program. It was found that there has not been a single DBE bid on bus operations, either as a contractor or subcontractor, since the inception of the Unified Certification Program. Therefore, VCTC has adjusted its DBE goal downward to **0.4%**, which will account for DBE participation in the construction and consulting categories only.

