Attachment C – ACTIA LBE/SLBE Program

ALAMEDA COUNTY TRANSPORTATION AUTHORITY

LOCAL BUSINESS ENTERPRISE AND SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

ALAMEDA COUNTY TRANSPORTATION AUTHORITY
AND
ALAMEDA COUNTY TRANSPORTATION IMPROVEMENT AUTHORITY
LOCAL BUSINESS ENTERPRISE AND
SMALL LOCAL BUSINESS ENTERPRISE PROGRAM

I. STATEMENT OF LBE AND SLBE POLICY

It is the policy of the Alameda County Transportation Authority to encourage businesses to locate and remain in Alameda County, to employ residents of Alameda County and to spend Authority 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. As a result, the Authority has established this Local Business Enterprise and Small Local Business Enterprise Program ("LBE/SLBE Program") which shall be applied to Contracts funded solely with local dollars.

The LBE/SLBE Program shall not be applied to Contracts funded with federal or State funds. Pursuant to State and federal law, the Authority's separate Disadvantaged Business Enterprise (DBE) Program shall be applied to any Construction Contract or Professional Services Contract administered by the Authority, if such Contract is funded in full or in part with federal dollars.

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 LBE/SLBE Program, an applicant must be a Local Business Enterprise or Small Local Business Enterprise (as such terms are defined below) located within Alameda County. This LBE/SLBE Program is neutral as to race, ethnicity, national origin, age, sex, religion and sexual orientation.

II. DEFINITIONS

The terms used throughout this LBE/SLBE Program are defined in the list below or in 49 CFR 26.5. The terms are arranged in alphabetical order.

A. Authority: the Alameda County Transportation Authority.

B. Bid: a quotation, proposal, solicitation, or offer by a bidder of contractor to perform or provide labor, materials or equipment to the Authority or a Sponsoring Agency for a price.

C. Caltrans: the State of California Department of Transportation.

D. Commercially Useful Function: shall mean that a business is directly responsible for providing the materials, equipment, supplies or services to the Authority as required by the

bid solicitation. To perform a Commercially Useful Function, the LBE or SLBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering and installing the materials. To determine whether an LBE or SLBE is performing a Commercially Useful Function, 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 and the LBE or SLBE credit claimed for its performance of the work, and other relevant factors. An LBE or SLBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of LBE or SLBE participation. In determining whether an LBE or SLBE is such an extra participant, the Authority will examine similar transactions, particularly those in which LBE or SLBEs do not participate. If an LBE or SLBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the LBE or SLBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice, it will be assumed that it is not performing a Commercially Useful Function. When an LBE or SLBE is presumed not to be performing a Commercially Useful Function as provided above, the LBE or SLBE may present evidence to rebut this presumption. The Authority will determine whether the firm is performing a Commercially Useful Function given the type of work involved and normal industry practices.

E. Construction Contract: any Contract between the Authority or a Sponsoring Agency and a person or firm to provide labor, materials, or equipment for Construction Work.

F. Contract: a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, Construction and professional services) and the buyer to pay for them.

G. Construction Work: all work to be performed by a person or firm to build or construct structures, roadways, or roadway appurtenances for the Authority or the Sponsoring Agency.

H. Goals: see LBE Goals and/or SLBE Goals.

I. Good Faith Effort: the steps, set forth in Section XI of this LBE/SLBE Program, undertaken to comply with the goals and requirements imposed by the Authority for participation of LBEs and SLBEs as Subcontractors.

J. 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. Such a Joint Venture may be in the form of a partnership or other multi-entity relationship.

K. LBE Goals: the targeted level of Participation for LBEs established by the Authority for Contracts awarded by the Authority and Sponsoring Agencies funded solely by local dollars.

L. LBE/SLBE Program: the Authority's Local Business Enterprise and Small Local Business Enterprise Program.

M. Local Business Enterprise or LBE: an economically independent and continuing business performing a Commercially Useful Function (as defined above in paragraph D) for profit, which is located within Alameda County and which can establish each of the following criteria:

1. The business must be located at a fixed commercial or residential address which constitutes a business location and where administrative, clerical, professional or productive work is being performed, relative to its contracts, and not a temporary or movable office, a post office box or a telephone answering service;

2. If the business has an office outside of Alameda County as well as an office within Alameda County, the office within Alameda County must be staffed on a full time, permanent basis with someone in the employ of the business;

3. The location of the business must have been within Alameda County for at least one (1) year prior to the award date;

4. The business must have a valid business license or tax certificate from its respective city or Alameda County dated at least one (1) year prior to the award date;

5. The business must have proof of one or more past contracts citing the business address;

6. The business shall be considered *bona fide* if the business' ownership interests are real and continuing and not created merely for the purpose of meeting the objectives of the Authority's LBE/SLBE Program; and

7. The business may not act as a passive conduit without contributing an added value or actual portion of the work awarded.

N. Measure B: the local initiative approved by the voters of Alameda County in 1986 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 Plan attached and incorporated by reference into Measure B. This measure authorized the creation of the Authority to administer the implementation of Measure B. A copy of Measure B, including the Expenditure Plan, is available at the Authority's office.

O. Participation: where 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.

P. 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.

Q. Professional Services Contract: any Contract between the Authority and a person or firm to provide labor, materials, or equipment for professional services.

R. SLBE Goal: the targeted level of Participation for SLBEs established by the Authority for Contracts awarded by the Authority and Sponsoring Agencies funded solely by local dollars. There may be some Contracts where it is not possible to include SLBEs because of the nature of the Contract. The Authority staff shall determine for each Contract whether it is practical to apply the SLBE Goal.

S. Small Business: a business with less than a stated amount of average gross annual revenue over the past three (3) years. For any business to qualify as a Small Business, it must have an average annual gross revenue within the State small businesses standards, as they may be adopted from time to time. (California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 8.) A copy of such standards currently in effect is attached hereto as Appendix A.

T. Small Local Business Enterprise or SLBE: an economically independent and continuing Small Business (as defined above in paragraph S) performing a Commercially Useful Function (as defined above in paragraph D) for profit, and which also qualifies as a Local Business Enterprise (LBE) as shown by the criteria above in paragraph M.

U. Sponsoring Agency: any public entity receiving funds from Measure B designated for capital highway and transit projects in the Authority's 1986 Measure B Expenditure Plan. The Expenditure Plan is available for review at the Authority's office. This LBE/SLBE Program shall only be applied to Contracts awarded by the Sponsoring Agency which are completely or partially funded by the Authority.

V. 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.

III. DEPUTY DIRECTOR

The Authority's Deputy Director is primarily responsible for implementing all aspects of the LBE/SLBE Program. The Deputy Director has direct, independent access to the Executive Director of the Authority concerning LBE/SLBE Program matters. The Deputy Director may be assisted by outside consulting firms in acting as Deputy Director. A list of the Deputy Director's responsibilities with respect to this Program can be found in Appendix B.

The contact information for the Deputy Director is as follows:

Alameda County Transportation Authority
Deputy Director
426 17th Street, Suite 100
Oakland, CA 94612
510-893-3347 x104
ADao@acta2002.com

IV. POWERS AND DUTIES OF THE AUTHORITY

In addition to the powers and duties enumerated elsewhere in this Program, the Authority will do the following:

A. The Authority may mediate disputes relating to payment between Prime Contractors and Subcontractors. When such a dispute arises, any party to the dispute may contact the Authority and request assistance. The Authority will investigate each party's contentions and work with both to resolve the dispute.

B. When the Authority determines that it has reason to believe that an organization has committed fraudulent acts in representing that it is an LBE or SLBE the Authority may debar the organization from participating in Measure B funded Contracts, enforce any of the penalties set out in Section XVII below, and/or report such fraudulent organizations to the appropriate government authorities.

V. RESPONSIBILITIES OF SPONSORING AGENCIES

Sponsoring Agencies are public entities receiving funds from the Authority for use on Alameda County projects designated in Measure B. A Sponsoring Agency may administer some or all of the design and construction of a Measure B project under the oversight and fiscal control of the Authority.

It shall be the responsibility of the Sponsoring Agency to ensure that Bids received by the Agency adhere to the procedures and provisions set forth in this LBE/SLBE Program. On a case-by-case basis, the Authority may decide that a given Contract awarded by a Sponsoring Agency shall be subject to the Sponsoring Agency's own local preference program rather than this LBE/SLBE Program.

VI. ESTABLISHMENT OF GOALS

A. LBE Goals. It is the Authority's policy to encourage businesses to locate and remain in Alameda County, to employ residents of Alameda County and to spend Measure B revenues within the County since Measure B funds are generated from Alameda County sales tax receipts. To implement this policy, the Authority is establishing Program Goals for Participation by LBEs. The LBE Goals are to award sixty percent (60%) of all Construction Contract dollars, and seventy percent (70%) of all Professional Services Contract dollars, on an annual basis, to firms who qualify as LBEs.

The LBE Goal for Construction Contracts shall be met by the Prime Contractor on each Construction Contract awarded by the Authority or Sponsoring Agency where such Contract is solely funded with local funds. The LBE Goal for Professional Services Contracts shall be met by the Prime Contractor on each Professional Services Contract in excess of Fifty Thousand Dollars ($50,000) awarded by the Authority or Sponsoring Agency, where such Contract is solely funded with local funds.

No Contract will be awarded to a Prime Contractor who has failed to meet the applicable LBE Goal in its Bid or other required submittal unless the Prime Contractor first proves it made a Good Faith Effort to meet the LBE Goal but was not able to do so.

B. SLBE Goals. The Authority recognizes the difficulties facing small businesses when competing in the marketplace. Moreover, it is the policy of the Authority to encourage businesses to locate and remain in Alameda County, to employ residents of Alameda County and to spend Authority funds for goods and services within the County. Therefore, the Authority will implement a Small Local Business Enterprise (SLBE) program to assist in the utilization of small local businesses. The SLBE Goals are to award twenty percent (20%) of all Construction Contract dollars, and thirty percent (30%) of all Professional Services Contracts, on an annual basis to firms who qualify as SLBEs. Subcontracts which are counted as part of meeting the applicable SLBE Goal also count toward meeting the applicable LBE Goal.

There may be some Contracts where it is not possible to include SLBEs because of the nature of the Contract. The Authority staff shall determine for each Contract whether it is practical to apply the SLBE Goal.

VII. COUNTING LBE AND SLBE PARTICIPATION

Only the value of the work actually performed by LBEs and SLBEs will be counted towards the applicable Goal. The Authority will count expenditures to LBEs and SLBEs 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 own work force will be counted. This includes the cost of equipment, supplies and materials obtained by the LBE and SLBE for work on the Contract. LBE and SLBE Prime Contractors should perform at least 30% of the total cost of its Contract with its own work force.

If a Joint Venture, the Authority will count a portion of the total dollar value of the LBE and SLBE Contract equal to the distinct, clearly defined portion of the work of the Contract that the LBE and SLBE performs toward the LBE or SLBE Goal. When a LBE and SLBE subcontracts part of the work on its Contract to another firm, the value of the subcontracted work may be counted toward the LBE or SLBE goal if the Subcontractor is itself a LBE or SLBE. Subcontracts to non-LBE and SLBE firms do not count toward the LBE and SLBE Goals. The Authority will not count the dollar value of work performed under a Contract with a firm after it has ceased to be certified toward the overall Goal. In addition, the Authority will not count the participation of a LBE or SLBE Subcontractor toward the applicable LBE or SLBE Goal until the LBE or SLBE has been paid.

VIII. MEANS TO INCREASE LBE AND SLBE PARTICIPATION

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

- Scheduling times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate LBE and SLBE and other small business participation.
- To the extent practicable, unbundling large contracts to make them more accessible to small businesses.

- Encouraging Prime Contractors to subcontract portions of work that they might otherwise perform with their own forces.
- Providing 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 LBEs and SLBEs, and other small businesses, obtain bonding and financing.
- Establishing formal processes for informing and notifying Prime Contractors and Subcontractors of Program requirements and of all contracting opportunities.
- Notifying all Subcontractors of change orders to ensure that the LBE and SLBE Goals are met in amendments and change orders.
- Providing the following technical assistance:
  - Access to a public plans room to review plans and specification prior to bid opening.
  - Hands on assistance in identifying items of work for subcontracting opportunities.
  - Assist in helping the Subcontractor put together a bid package.
  - Conduct construction site walk-through to help the Subcontractor determine his/her capacity before submitting a bid.
  - Provide a list to Subcontractors of all plan holders.
  - Assist in preparing bond and loan documents.
  - 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.
  - 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.
  - Mobilize support, provide the Subcontractor with logistic information regarding storing their equipment and supplies on the job site.
  - Help the Subcontractor on the procedures and provide assistance in completing the paperwork for submitting change orders.
  - 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 operating 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.
- Monitoring the Subcontractor process by requiring proof of Subcontractor consent, allowing sufficient time for contacting Subcontractors and "demonstrations" of Good Faith Efforts by Prime Contractors.
- Providing information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of LBEs and SLBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential Subcontractors; provision of information in languages other than English, where appropriate).

- Providing services to help LBEs and SLBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.

IX. CERTIFICATION OF LBE AND SLBE FIRMS

A. Certification. LBEs and SLBEs must be certified prior to Bid opening, except as otherwise approved by the Authority on a case by case basis, to determine whether the Prime Contractor has met the applicable LBE and SLBE Goals. A business seeking to be certified as an LBE or an SLBE must submit an application to the Authority. Each business seeking certification under this Program shall complete an application. The application shall be signed by the authorized representative of the business entity. If deemed appropriate, the Authority may conduct a site visit before certifying the firm.

B. Recertification. Authority certification of an LBE or SLBE is valid for one (1) year from the month of certification and must be renewed annually. A certified LBE or SLBE shall initiate a streamlined annual recertification by submitting a written request to the Authority and stating, under penalty of perjury, that there has been no change in the ownership of the firm. A certified LBE or SLBE need not submit a new application for certification unless the firm does not make such a request for the streamlined annual recertification or if the annual recertification is denied.

C. Investigations and Challenges of LBE or SLBE Status. The Authority may initiate an investigation of any firm's certification, if it has reason to believe there is some question regarding the firm's eligibility as an LBE or an SLBE. While investigating a firm's certification, the Authority will follow the guidelines and procedures used by Caltrans for investigations and challenges of Disadvantaged Business Enterprises (DBEs).

The Authority will investigate any protest or complaint made by a person, another firm, or an organization regarding the certification of an LBE or SLBE. Any protest shall be in writing to the Authority, must clearly delineate the character of the protest, and must state the reasons, including any evidence, on which the protester questions the validity of a LBE or SLBE certification.

D. Decertification. Firms intentionally falsifying their status as an LBE or SLBE may be debarred from bidding on future Authority work for a period of up to three years. A list of firms decertified within the last three years by the Authority or Sponsoring Agencies is available upon request and will be sent to persons or businesses when the lists of certified LBE or SLBE firms are mailed.

The Sponsoring Agency shall inform the Authority within five (5) working days of making a determination that it has reason to believe an organization has committed fraud in representing that it is an LBE or SLBE. The Sponsoring Agency shall report such organizations to the appropriate government authorities.

4. Following up 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.

5. Making the project plans, specifications, and requirements for the selected subcontracting or material supply work available for review by interested LBEs and SLBEs.

6. Where needed, advising and making efforts to assist interested LBEs and SLBEs in obtaining lines of credit, or required insurance.

7. Negotiating in good faith with LBEs and SLBEs and, as determined by the Authority, not unjustifiably rejecting as unsatisfactory bids prepared by any LBE or SLBE.

8. Not rejecting LBEs and SLBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. A potential Subcontractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the LBE and SLBE Goals.

9. Contacting the Authority, identifying the LBEs and SLBEs contacted and explaining any problems securing LBE and SLBE bidders at least five (5) working days before Bid opening.

10. Advertising, not less than ten (10) calendar 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 15 calendar days prior to the date the Bids are opened.

11. Requesting assistance from contractors' groups, or other organizations that provide assistance in the recruitment and placement of LBEs and SLBEs, if any are available.

12. Making any other efforts to obtain LBE and SLBE Participation that the Authority could reasonably expect would produce a level of participation sufficient to meet the Authority's Goals and requirements.

Prime Contractors who have not met the LBE and SLBE Goals for participation will demonstrate in their Bid documents that they have used Good Faith Efforts to utilize LBE and SLBE subcontractors, suppliers, manufacturers, brokers, truckers or owner/operators of equipment. Before noon of the first working day following the date the Bid was submitted, contractors who have not met the goal will submit a Good Faith Effort Report. The Prime Contractor will list on the report the names of all LBEs or SLBEs contacted by the Prime Contractor to solicit their Bids; the name and title of the person contacted; the date contact was made; and the dates of all follow-up contacts. The Prime Contractors will also identify specifically the selected items of work that Bids from LBEs and SLBEs were requested for; the dates plans and specifications were made available to the LBEs and SLBEs; what technical

assistance was offered the LBEs and SLBEs; and the reason that the bid was rejected. Prime Contractors will attach all letters and other documents relating to their efforts to comply with the Good Faith Effort requirements to solicit LBE and SLBE Participation.

The Authority recognizes that a bidder using good business judgment would consider a number of factors in negotiating with Subcontractors, including LBEs and SLBEs, and would take a firm's price and capabilities as well as the Contract Goal into consideration. However, the fact that there may be some additional costs involved in finding and using LBEs and SLBEs is not in itself sufficient reason for a bidder's failure to meet the LBE and SLBE Goals, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a Contract with its own organization does not relieve the bidder of the responsibility to make Good Faith Efforts. Prime Contractors are not, however, required to accept higher quotes from LBEs and SLBEs if the price difference is excessive or unreasonable.

B. Good Faith Effort Review. If a bidder has not met the goals for LBE and SLBE Participation, the Sponsoring Agency shall investigate whether the Prime Contractor made a Good Faith Effort to meet the LBE and SLBE Goals and shall recommend to the Authority's Board whether the Bid should be accepted or rejected. In its investigation, the Sponsoring Agency may contact the LBEs and SLBEs listed on the Good Faith Effort Report to verify the information provided by the bidder. The bidder will also provide further documentation regarding its efforts to attain LBE and SLBE Participation as requested by the Authority or Sponsoring Agency.

Whenever the Authority or Sponsoring Agency recommends rejection of a Bid that has not met the LBE or SLBE Goals, the Prime Contractor may appeal the rejection of its Bid to the Good Faith Effort Review Committee ("Committee") assembled for this purpose by the Authority. The Prime Contractor must notify the Authority of its intent to appeal within three (3) days of the Authority's decision to reject the Prime Contractor's Bid. The Committee will review the Authority or Sponsoring Agency's decision to award a Contract based on Good Faith Effort when the LBE and/or SLBE Goals are not met. The Committee shall consist of three (3) members appointed by the Authority and shall include an Authority staff member, an Authority Board representative, and a representative of the respective Sponsoring Agency, if any.

The Committee shall hold a hearing in Alameda County. All Subcontractors listed on the Good Faith Report will be given notice of the hearing at least ten (10) days before it takes place. The Committee will review evidence at the hearing to determine whether the Prime Contractor made a Good Faith Effort 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 the bidders and Subcontractors participating in bids on the project an opportunity to present evidence relating to the Prime Contractor's Good Faith Effort to meet the LBE and SLBE Goals.

The Committee's decision on the Prime Contractor's Good Faith Effort shall be final. 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.

XII. BIDDING PROCESS FOR CONSTRUCTION CONTRACTS

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

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

C. Solicitation of LBE and SLBE Bids. Prime Contractors shall notify local contractor associations and business development centers of their intention to solicit LBE and SLBE Participation in a Contract at least ten (10) days, but preferably twenty (20) days, prior to the Bid opening. Such notification shall be by registered or certified mail or other suitable means such as facsimile copy.

D. Bid Opening. Prime Contractors must submit a LBE/SLBE Utilization Form as applicable with their Bids. This form will identify the particular LBEs and SLBEs 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.

XIII. SUBMITTAL OF QUALIFICATION STATEMENTS AND PROPOSALS FOR PROFESSIONAL SERVICES CONTRACTS

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 manner in which a firm or team plans to meet the requirements of this LBE/SLBE Program. Therefore, although assignment of tasks is not required at this stage, firms wishing to be considered further must clearly establish that they will comply with this LBE/SLBE 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, and the Good Faith Effort information, if applicable, must be submitted at the time the Prime Contractor submits the project proposal to the Authority or the Sponsoring Agency.

XIV. MONITORING COMPLIANCE

Prime Contractors shall make their best efforts to maintain the LBE and SLBE Goal level achieved at the time the Contract is awarded throughout the term of the Contract. Such best efforts shall include any increase in the amount or scope of the Contract implemented by change order.

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

In the event there is an increase in the Contract size or scope, Prime Contractors shall make their best efforts to maintain the LBE and SLBE goals established at the time the Contract was originally awarded.

The Authority shall monitor compliance with the requirements of this Program during the term of the Contract. If the Authority determines that there is cause to believe that a Prime Contractor or Subcontractor has failed to comply with any of the requirements of this Program or the Contract provisions pertaining to LBE or SLBE utilization, the Authority shall so notify the Contractor and the Sponsoring Agency, if any. 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's Board may hold a hearing to evaluate the Prime Contractor's progress toward meeting the applicable Goals of any Contract subject to this Program.

Firms found to be in violation of these provisions will be subject to penalties described in Section XVII below.

XV. RECORDS

The Authority or Sponsoring Agency, if any, shall maintain accurate records for each Contract awarded, including dollar value, 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 and SLBEs, and 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:

- The name and address of each first-tier Subcontractor.
- The name and business address, regardless of tier, of every LBE and SLBE Subcontractor.
- The date of payment and the total dollar figure paid to each Subcontractor.
- A LBE or SLBE Prime Contractor shall also show 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.

XVI. PROMPT PAYMENT

Prime Contractors shall be paid within thirty (30) days of submitting a verified invoice. Along with a request for payment, a Prime Contractor will submit a Progress Payment Form for Subcontractors. When it pays the Prime Contractor, the Authority will include a Progress Payment Form that reflects all approved items. Prime Contractors will enclose a photocopy of this Progress Payment 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. 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 both LBE/SLBE and non-LBE/SLBE Subcontractors.
>
> The Prime Contractor agrees further to release retainage payments to each Subcontractor within 30 days after the Subcontractor's work is satisfactorily completed. 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 both LBE/SLBE and non-LBE/SLBE Subcontractors.

XVII. PENALTIES AND SANCTIONS

When the Authority or a Sponsoring Agency awards a Contract subject to this LBE/SLBE 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 LBE/SLBE Program, either may conduct an investigation. If, based on this investigation 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 notice and an opportunity to be heard, and the Authority and Sponsoring Agency may impose the sanctions described below for each violation of this LBE/SLBE 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 LBE/SLBE 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 LBE/SLBE Program are as follows:

1. imposing a fine;

2. suspending the Contract;

3. rescinding the Contract based upon a material breach of contract pertaining to LBE and SLBE utilization;

4. disqualifying a bidder, contractor, or other business from eligibility for providing goods or services to the Authority for a period not to exceed two years.

XVIII. REPORTING REQUIREMENTS

Each Sponsoring Agency will provide a report on a quarterly basis to the Authority which indicates (i) all Contracts and subcontracts awarded to LBEs and SLBEs, and (ii) all payments made to LBE, SLBE and other firms, during the reporting period for all Measure B funded projects.

Prior to awarding any Construction Contract or any Professional Services Contract with a fee of $50,000 or more, the Sponsoring Agency shall provide the Authority with a report of the extent to which the proposed recipient has met the applicable Goals for LBE and SLBE participation and/or documentation of Good Faith Efforts in accordance with Section XI of this program.

XIX. PROGRAM REVIEW

This LBE/SLBE Program will be reviewed annually by the Authority. The Authority may make such changes in the Program which are required to implement its goals and objectives. The Executive Director will prepare a quarterly report on all Contracts awarded for the period to be reviewed by the Authority.

XX. SEVERABILITY

The provisions of this LBE/SLBE 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.

XXI. CONFIDENTIALITY

The Authority will 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

California Code of Regulations' Definition of Small Businesses

TITLE 2. Administration
Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 8. Office of Small Business Procurement and Contracts
Article 1. General Provisions
§1896. Definition of Terms As Used in This Subchapter

(j) "Average Annual Gross Receipts" means all pecuniary gross receipts (less returns, allowances and interaffiliate transactions), the assignment of such receipts notwithstanding, of a business concern from whatever source derived, as entered or to have been entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion or other commonly recognized and accepted accounting method). Proof of average annual gross receipts must be provided in the form of either:
(1) A copy of completed tax returns (with all schedules), as filed with the United States Department of the Treasury, Internal Revenue Service, for Federal income tax purposes; or
(2) Audited financial statements covering the applicant business concern and all affiliates; or
(3) If the documents required under 1 or 2 above are unavailable, an unaudited financial statement covering the applicant business concern and all affiliates; and
(4) A duly sworn and notarized statement which attests to the truthfulness and accuracy of the unaudited financial statement as well as the authority of the signatory to make such representation regarding the applicant business concern and a promise to provide the information required under 1 or 2 above within 90 days of the effective date of certification.
Average annual gross receipts will be determined by adding the gross receipts for the applicant concern and any affiliates during the previous three tax years and dividing by three. Should a sole proprietorship or partnership be in business for less than three tax years, additional prior year(s) personal and affiliate gross receipts will be considered to complete the aggregate gross receipts for the previous three years to be averaged. Should a corporation be in business for less than three tax years, the average annual gross receipts will be determined by dividing the total gross receipts by

If a concern which has been in business more than 12 months changes its tax year (fiscal year), its annual receipts will be determined from its most recently completed 36 months period in business. Once the new fiscal year has been completed, the Office of Small and Minority Business, also known as the Office of Small Business Certification and Resources, may require a new application which sets forth the applicant's annual receipts under the new fiscal year cycle. If a concern has acquired an affiliate during the applicable tax year, it is necessary in computing the applicant's annual receipts, to include the affiliate's receipts during the entire applicable tax year, rather than only its receipts during the period in which it has been an affiliate during a portion of the applicable tax year.

(k) "Familial Relationship" means relationships between the following family members: Husband, wife, child, stepchild, mother, father, grandparent, brother, sister, grandchild, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and if related by blood, uncle, aunt, niece, nephew.
(l) "Small Business" as used with regard to a public works contract as defined in Division 2, Part 1, Chapter 1, Section 1101 of the California Public Contract Code, means a business concern which has been issued a currently valid Contractor's license by the State of California and meets the following requirements.
(1) Has requested the status of a small business and has been approved as such by the Office of Small and Minority Business, also known as the Office of Small Business Certification and Resources.
(2) Is not, together with any affiliate(s), dominant in its field of operation(s).
(3) Is independently owned and operated, the principal office of which is located in California, and the officers, in the case of a corporation, or owners in all other cases, of such business domiciled in California.
(4) Together with any affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three tax years.
The firm shall also set forth on the bid form the name and nature of any business which has assisted it in obtaining bonding for submission of the bid with respect to which the firm seeks a Small Business Preference, and if the firm which rendered bonding assistance is listed as a subcontractor on such bid there shall be set forth on the bid form the percentage of the contract price called for by the prime bid which will be performed by subcontractor.

APPENDIX B

DEPUTY DIRECTOR RESPONSIBILITIES

The specific duties and responsibilities of the Deputy Director under this LBE/SLBE 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 Good Faith Efforts;

6. Ensuring that bid notices and requests for proposals are available to LBEs and SLBEs 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 and SLBEs with information and assistance in preparing bids, obtaining bonding and insurance;

10. Planning and participating in LBE and SLBE training seminars;

11. Providing outreach to LBEs and SLBEs 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 information as required.

APPENDIX C
PROJECT CONSULTANT TEAM

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

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

Signature - Authorized Officer of Prime Consultant Firm

(Submit with Proposal)

APPENDIX D
PROFESSIONAL SERVICES QUESTIONNAIRE

Date _____
Phone _____

_____
Firm Name

_____
Street Address City State Zip

TYPE OF ORGANIZATION (PRIME CONSULTANT_____ SUBCONSULTANT _____)

_____	Individual	Name of Owner	_____
_____	Corporation	State of Incorporation	_____
_____	Partnership	Indicate General or Limited	_____
_____		Name of Partners	_____
_____		_____	
_____	Joint Venture	Joint Venture Participants	
		_____	

BUSINESS LICENSE II

OWNERSHIP INTERESTS

	Black	Hispanic	Asian or Pacific Islander	American Indian or Alaskan Native	White	Women
Number						
% Assets Owned						

JOINT VENTURE OWNERSHIP INTERESTS

	Minority	Non-Minority	Women
Number	_____	_____	_____
Percentage	_____	_____	_____

I certify that I am not an employee of the Alameda County Transportation Authority and that no member/partner of this firm is employed by the Alameda County Transportation Authority

Signature _____
Firm _____
Address _____
_____