



# **ALAMEDA COUNTY TRANSPORTATION COMMISSION**

## **LOCAL BUSINESS CONTRACT EQUITY PROGRAM**

**Adopted December 7, 2017**

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## SECTION I. POLICY

### **A. Policy Statement**

The Alameda County Transportation Commission (Alameda CTC) has established this Local Business Contract Equity (LBCE) Program to create economic growth and jobs within Alameda County by requiring local contracting that supports residents and businesses in Alameda County. The LBCE Program helps to identify and engage the participation of Local Business Enterprise (LBE), Small Local Business Enterprise (SLBE) and Very Small Local Business Enterprise (VSLBE) firms located in Alameda County on applicable contracts as specified in **Section I.C** (Applicability).

Further, the LBCE Program contributes to the overall economic vitality of the County by:

1. Encouraging businesses to locate and remain in Alameda County;
2. Providing employment opportunities for residents of Alameda County; and
3. Generating economic activity and stimulating the local economy.

### **B. Background**

The Alameda County Transportation Authority (ACTA) adopted a Local Business and Minority/Woman-Owned Business Enterprise Construction Program in 1995 as part of the first Measure B program. The initial goal of the program was to ensure participation of local firms as well as minority- and women-owned businesses. Over the years, the program evolved to reflect changes in statutes and court rulings associated with contract equity issues at both the state and federal levels.

In 2000 and 2001, ACTA formally adopted an LBE/SLBE Program with the specific purpose of encouraging businesses of all sizes to locate and remain in Alameda County, employ County residents, and spend Measure B funds for goods and services within Alameda County.

In 2007, ACTA and the Alameda County Transportation Improvement Authority (ACTIA), the agency created to administer the 2000 Measure B sales tax, jointly adopted a Local Business Contract Equity Program as a replacement for the earlier LBE/SLBE Program, extending its application to VSLBE firms and incorporating other policy changes designed to improve and facilitate implementation of the program.

In July 2010, Alameda CTC was created by the merger of the Alameda County Congestion Management Agency (ACCMA) and ACTIA, to streamline operations, eliminate redundancies, and save taxpayers' dollars. Alameda CTC is responsible for administering the sales tax Expenditure Plans, including contract oversight, policy direction, financing, investment management, and coordination of projects with regional transit and transportation agencies and other project sponsors, as required.

In November 2010, Alameda County voters approved the Measure F Alameda County Vehicle Registration Fee (VRF) program. The goal of the VRF program is to sustain the county's transportation network and reduce traffic congestion and vehicle-related pollution.

In November 2014, Alameda County voters approved Measure BB, augmenting and extending the existing transportation sales tax to fund implementation of a 30-year Transportation Expenditure Plan through 2045.

The funds produced by Measure B, Measure BB and the VRF provide significant dollars in transportation-related contracts for Alameda County-based firms. It is Alameda CTC's objective to identify and include qualified Alameda County-based businesses in the purchases of goods and

services required by the Alameda CTC and its Sponsor Agencies for area-wide transportation capital projects, local streets and roads, mass transit projects, bicycle and pedestrian safety, special transportation for seniors and people with disabilities, and other programs included in the Transportation Expenditure Plans.

**C. Applicability**

This LBCE Program applies to contracts in excess of \$25,000, in accordance with both **Paragraphs 1 and 2** below:

1. **Fund Source.** This LBCE Program applies to contracts which are funded either:
  - a. Solely by VRF, Measure B and/or Measure BB funds, or
  - b. In part by VRF, Measure B, and/or Measure BB funds in combination with other local funds.

The LBCE Program does not apply to contracts that include state and/or federal funds.

2. **Contract Type.** This LBCE Program applies to contracts which are either:
  - a. Administered by Alameda CTC, or
  - b. Related to, or in support of, a Sponsor Agency-administered capital project.

The applicable goals are specified in **Section II.A** (LBE, SLBE and VSLBE Goals and Participation).

This LBCE Program is intended to be consistent with the Alameda CTC’s Procurement Policy, which may be updated and approved by the Commission as necessary.

This LBCE Program is neutral as to race, religion, color, ethnicity, national origin, age, sex, physical handicap, sexual orientation, and any other characteristic protected by law.

**SECTION II. PROGRAM IMPLEMENTATION**

**A. LBE, SLBE and VSLBE Goals and Participation**

An LBE, SLBE or VSLBE contract goal is a percentage of the total contract amount that is expected to be performed by the firms with the corresponding certification. LBE, SLBE, and VSLBE firms must be certified prior to submission of any bid or proposal to be counted towards meeting the applicable LBE, SLBE, and/or VSLBE goals.

**1. Summary of Goals**

**TABLE 1: SUMMARY OF GOALS**

Type of Contract	LBE	SLBE <sup>1</sup>	VSLBE <sup>2</sup>
<b>Contract over \$75,000</b>			
Construction	60.0%	20.0%	N/A
Professional Services	70.0%	30.0%	N/A
<b>Contract greater than \$25,000 and equal to or less than \$75,000</b>			
Construction	N/A	N/A	N/A
Professional Services	N/A	N/A	30.0%
1. <i>SLBE participation also counts toward fulfilling the LBE goal.</i>			
2. <i>VSLBE participation also counts toward fulfilling the LBE and SLBE goals.</i>			

## **2. Applicable Credits for Contract Award**

During the selection process for contract award of professional services contracts, the ability to meet or exceed LBE, SLBE and/or VSLBE goals shall yield applicable credits as follows:

- LBE and SLBE Goals: Five percent (5.0%) of the total evaluation points for each goal, for a total of ten percent (10.0%).
- VSLBE Goal: Twenty percent (20.0%) of the total evaluation points.

## **3. LBE Goals**

The LBE goals for contracts over \$75,000 are as follows:

- Sixty percent (60.0%) on construction contracts, and
- Seventy percent (70.0%) on professional services contracts.

Participation of businesses that are certified as LBE, SLBE, or VSLBE count toward fulfilling a LBE contract goal.

The LBE goal for construction contracts can be met through the participation of certified prime and/or subcontractor(s). A bidder that fails to meet the LBE goal on a construction contract shall not be awarded the contract unless the Good Faith Efforts (GFE) requirements are met (see **Appendix C**).

The LBE goal for professional services contracts can be met through the participation of certified prime and/or subcontractor(s). A proposer that fails to meet the LBE goal shall not receive the applicable credit of five percent (5.0%) of the total evaluation points during the selection process.

## **4. SLBE Goals**

The SLBE goals for contracts over \$75,000 are as follows:

- Twenty percent (20.0%) on all construction contracts, and
- Thirty percent (30.0%) on all professional services contracts.

Participation of businesses that are certified as SLBE or VSLBE count toward fulfilling a SLBE contract goal.

The SLBE goal for construction contracts can be met through the participation of certified prime and/or subcontractor(s). A bidder that fails to meet the SLBE goal on a construction contract shall not be awarded the contract unless the GFE requirements are met (see **Appendix C**).

The SLBE goal for professional services contracts can be met through the participation of certified prime and/or subcontractor(s). A proposer that fails to meet the SLBE goal shall not receive the applicable credit of five percent (5.0%) of the total evaluation points during the selection process.

## **5. VSLBE Goal**

The VSLBE goal of thirty percent (30.0%) applies to professional services contracts greater than \$25,000 and equal to or less than \$75,000.

The VSLBE goal can be met through the participation of certified prime and/or subcontractor(s). A proposer that fails to meet the VSLBE goal shall not receive the applicable credit of twenty percent (20.0%) of the total evaluation points during the selection process.

## **B. Waiver of Goals**

In some cases, a request may be made to waive the LBE and/or SLBE goals due to extremely limited subcontracting opportunities for LBE and/or SLBE firms, lack of interested LBE and/or SLBE firms in the geographic area in which work is to be performed, or other reasons. Alameda CTC or the Sponsor Agency may recommend that a contract be advertised without LBE and/or SLBE goals, and such recommendation must be reviewed and approved by the Commission. Before making a recommendation to waive the goals, the following due-diligence steps must be completed:

1. Define the draft scope of work, items of work and estimated value of work items.
2. Review Alameda CTC certification database, and the certification database of partner certifying agencies, for certified businesses that are willing and able to perform the listed items of work.
3. Conduct focused outreach to identify Alameda County businesses, whether certified or eligible for certification, that are willing and able to perform the listed items of work.
4. Post the “Intent to Waive Goals” notice and the description of the draft scope of work and items of work on Alameda CTC’s website at least forty-five (45) calendar days before advertising the contract to allow any LBE, SLBE and/or VSLBE firms to notify Alameda CTC of their interest and ability to perform such work.

If Alameda CTC determines that, after completing the steps listed above, there is an insufficient number of LBE and/or SLBE firms willing and able to perform the items of work, a recommendation shall be submitted to the Commission for permission to advertise without one or both goals. Alameda CTC’s report to the Commission shall contain a detailed description of the steps taken to identify any LBE, SLBE and/or VSLBE firms to perform the items of work.

## **C. Use of Sponsor Agency Local Business Preference Program**

A Sponsor Agency may request to use its own local business preference program in lieu of this LBCE Program if such program has been formally adopted by the Sponsor Agency’s governing body. A Sponsor Agency’s request to use its own local business program must include a copy of the program and evidence of the governing body’s adoption of such program. Substitution of the LBCE Program must be approved in writing by the LBCE Liaison Officer prior to advertisement of the contract.

## **D. Certification**

### **1. Eligibility**

For a business (e.g., non-profit, sole proprietorship, partnership, corporation, or joint venture) to be eligible for certification under this LBCE Program, it must meet or exceed all applicable criteria set forth below:

- **LBE Criteria**

- a. Hold a valid business license issued by Alameda County or a city within Alameda County for at least six (6) months prior to certification date;
- b. Be located and fully operational at a fixed place of business within Alameda County where administrative, clerical, professional, and other productive work is continuously performed relative to its commercial contracts for at least six (6) months prior to the certification date, with two types of evidence of maintaining a working office at such

business address: (1) proof of a prior or current fully executed contract containing such business address, and (2) a lease agreement or proof of ownership of real property for the fixed place of business (a temporary, mobile or virtual office, project work station, telephone answering and/or mail service in an office suite, post office box or address, etc., do not constitute a fixed place of business location);

- c. Have a minimum of one full-time equivalent employee staffing the Alameda County office, if the business has one or more offices located outside of Alameda County;
  - d. Be bona fide with real and continuing business activities and ownership interests which are not created merely for the purpose of meeting the objectives of the LBCE Program; and
  - e. Be economically independent, perform commercially useful functions, and have a customer base (a business acting as a passive conduit rather than contributing a value added or actual portion of the work performed does not qualify for certification).
- **SLBE Criteria**
    - a. Meet all LBE Criteria; and
    - b. Have annual gross revenue, averaged over the most recent three (3) tax years, that does not exceed the current small business size standard for its principal business activity code as established by the U.S. Small Business Administration (SBA) and available on the SBA website.
  - **VSLBE Criteria**
    - a. Meet all SLBE Criteria; and
    - b. Have annual gross revenue, averaged over the most recent three (3) tax years, that does not exceed \$3,500,000.

## **2. Certification Process**

Businesses must submit a valid and complete application, with all required forms and documentation, in accordance with application instructions. Alameda CTC may conduct a site visit before certifying the firm, and at any time during the term of the certification as it may be extended. The application processing period is approximately thirty (30) calendar days from the date a valid and complete application is received by Alameda CTC. Alameda CTC certifications shall be valid for up to two (2) years from the last day of the month in which the certification was granted.

## **3. Recertification Process**

Certifications must be renewed biennially by submitting a valid and complete recertification application, with all required forms and documentation, in accordance with application instructions. If a firm's certification lapses, that firm must follow the Certification Process to again be certified under this LBCE Program.

## **4. Certification Denial Appeals**

A firm that is found to be ineligible for certification under the LBCE Program may make a written appeal within ten (10) calendar days of the notice of determination. Written appeals must be addressed to the LBCE Liaison Officer, and must include any evidence that might refute the original finding. The LBCE Liaison Officer will conduct an investigation, and review all records

used in making the determination, along with the written appeal. The LBCE Liaison Officer will present findings and make a recommendation to the Executive Director for action. The Executive Director will render a final determination within thirty (30) calendar days of receiving the appeal, and such determination shall be final.

## **5. Status Changes**

A firm that no longer meets the certification requirements will be subject to decertification. Changes to eligibility criteria may result in status changes from one certification category to another. Alameda CTC shall inform such firms of any such changes to status or decertification. A certified firm shall promptly notify Alameda CTC in writing of any change in circumstances affecting such firm's ability to meet size, certification status, ownership, or control requirements or any material change in the information provided in its application form.

## **6. Investigations of Any Challenges to LBE, SLBE, or VSLBE Status**

Alameda CTC may investigate any written communications challenging the validity of a certification status of a business. The communication must clearly outline the reason(s), and include any evidence, on which the validity of a certification is questioned. If an investigation determines that a firm was properly certified but is no longer eligible, Alameda CTC will adjust or cancel the certification pursuant to the Status Changes provisions above. Any firm determined to have knowingly made, used, or caused to be made or used a false record, information or statement to secure its status as an LBE, SLBE or VSLBE will be decertified and sanctions will be imposed. Sanctions may include, but are not limited to:

- a. Banning of the business from bidding, working or providing goods and services on all Alameda CTC contracts for a period of three (3) years;
- b. Ineligibility, if applicable, as an LBE, SLBE, and VSLBE for the purposes of all contracts projects, and programs, including subcontracting and joint ventures, under this LBCE Program for a period of three (3) years;
- c. Referral of the matter to legal counsel for determination as to refer complaint to the District Attorney for criminal prosecution; and
- d. Any other penalty available by law or in equity.

Any violations found after awarding a contract will be considered a material breach of contract and Alameda CTC may, at its option, consider the contract null and void; recover any and all damages; and immediately implement penalties. Alameda CTC shall inform such firms, and may advise partner certifying agencies of any status changes, including decertification and debarment.

## **7. Decertification Appeals**

If a firm disputes a certification status change or decertification following an investigation, that firm may appeal the finding by submitting a written appeal within ten (10) calendar days after Alameda CTC's issuance of the notice of the results of the investigation. Written appeals must be addressed to the LBCE Liaison Officer, and must include any evidence that might refute the original finding. The LBCE Liaison Officer will review all records used in making the determination, along with the written appeal. The LBCE Liaison Officer will present findings and make a recommendation to the Executive Director for action. If the Executive Director finds that the status change or decertification was valid, the matter will be presented to the Commission for a final determination, and such determination shall be final. If, however, the Executive Director



finds that the appeal is valid, the Executive Director shall rescind the certification status change or decertification.

**E. Status Monitoring and Reporting**

**1. Measurement**

Only the value of the work actually performed by LBE, SLBE and/or VSLBE firms will be counted towards the applicable goals. Alameda CTC will count expenditures to LBE, SLBE and/or VSLBE firms 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, SLBE, and/or VSLBE firm’s own workforce will be counted. This includes the cost of equipment, supplies, and materials obtained by the LBE, SLBE and/or VSLBE firms for work on the contract.

Alameda CTC or its Sponsor Agency will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, as well as the credit claimed for its performance of the work, and other relevant factors in determining whether a business is performing a Commercially Useful Function.

When a business is presumed to not be performing a Commercially Useful Function, the business may present evidence to rebut this presumption. Alameda CTC or the Sponsor Agency will make the final determination whether the firm is performing a Commercially Useful Function given the type of work involved, normal industry practices, and the evidence presented.

**2. Participation Requirements**

When a firm loses or changes its certification status after contract award, the participation of such firm shall continue to count toward the goal(s) based on its certification status as reported at the time of the contract award. However, any additional work given to a firm through a contract amendment after it has lost its certification, shall not count towards the applicable goal.

**3. Joint Ventures**

For joint ventures, Alameda CTC will count the total participation dollar value (participation ratio times the total project cost) of the LBE, SLBE, and/or VSLBE contract(s) equal to the distinct, clearly defined portion of the work of the contract that the LBE, SLBE, and/or VSLBE performs toward the goals. The participation ratio will be based on the average of LBE, SLBE, and/or VSLBE revenue share and the profit share, if different, attributed to the LBE, SLBE, and/or VSLBE. When a joint venture subcontracts part of the work on its contract to another firm, the value of the subcontracted work may be counted toward the LBE, SLBE, and/or VSLBE goal if the subcontractor(s) are certified as such. Work on subcontracts to non-certified firms do not count toward the LBE, SLBE, and/or VSLBE goals.

The dollar amount of the joint venture to be counted towards the goals for LBE, SLBE and/or VSLBE participation, is calculated using the following formula:

$$\begin{array}{l} \text{Dollar value of} \\ \text{joint venture} \\ \text{contract} \end{array} \quad \mathbf{X} \quad \begin{array}{l} \text{Percent of LBE/SLBE/VSLBE joint} \\ \text{venture financial participation in the} \\ \text{contract} \end{array} \quad = \quad \begin{array}{l} \text{Dollar value of joint} \\ \text{venture contract} \\ \text{applicable to goals} \end{array}$$

Whenever a joint venture involves LBE, SLBE, and/or VSLBE firms, the prime contractor shall provide Alameda CTC with the basis for creation of the joint venture, the responsibilities of each of the parties, and a full account of the LBE, SLBE, and/or VSLBE participation of each of the parties. Such joint venture shall ensure that the participating LBE, SLBE, and/or VSLBE have a commensurate share of the profit or loss to be realized from the joint venture. The agreement establishing the joint venture shall be in writing. Alameda CTC shall have the right to review the joint venture agreement and determine if such arrangement is within the requirements and intent of this LBCE Program.

#### **F. Program Compliance**

All prime contractors shall take all necessary and reasonable measures to achieve the LBE, SLBE, and/or VSLBE participation commitment established in the contract by the completion of the contract. Any modification to the original participation level shall be approved by Alameda CTC.

Any substitution of LBE, SLBE, and/or VSLBE subcontractor(s) must be approved in writing beforehand by Alameda CTC, or by the Sponsor Agency with written consent from Alameda CTC. If an LBE, SLBE, and/or VSLBE subcontractor is unable to perform successfully, such subcontractor shall be replaced and the Sponsor Agency, or the prime contractor, shall notify Alameda CTC and respectively seek written consent or approval to substitute such subcontractor. Alameda CTC may investigate the circumstances surrounding the request for substitution. The prime contractor shall make its best effort to replace the original LBE, SLBE, or VSLBE with another firm that shall count toward the same participation (e.g., an LBE firm may be substituted by an LBE, SLBE or VSLBE).

Alameda CTC and its Sponsor Agencies shall monitor compliance with the requirements of this LBCE Program during the term of the contract. If Alameda CTC or its Sponsor Agency determines that a prime contractor or subcontractor has failed to comply with the LBCE Program, Alameda CTC or its Sponsor Agency shall notify the contractor to remedy any such failure(s). Alameda CTC may require reports, information, and documentation from prime contractors, subcontractors, bidders, and the Sponsor Agency, as reasonably necessary, to determine compliance with this LBCE Program. Alameda CTC may hold a hearing to evaluate potential non-compliance issues. While the evaluation points for meeting the LBE, SLBE and/or VSLBE goals are applied during the selection process, there is no requirement that any particular goal be met on non-construction contracts. Similarly, participation falling short of the overall goal on construction contracts shall not be considered non-compliant if the bidder made Good Faith Efforts to meet the goals.

#### **G. Program Outreach**

Alameda CTC will use the following means to increase LBE, SLBE, and VSLBE participation:

1. Hold periodic workshops to inform businesses of upcoming contract and business networking opportunities.
2. Provide information on contracting processes and specific contract opportunities (e.g., make an effort to ensure: inclusion of LBE, SLBE, and/or VSLBE firms on contracting opportunity mailing lists; dissemination of the list of potential subcontractors to bidders regarding prime contracts; and make information available in languages other than English, as appropriate).
3. To the extent practicable, unbundle large contracts to make them more accessible to small businesses.

4. Encourage prime contractors to subcontract portions of work that they might otherwise perform with their own workforce.
5. Provide assistance to Sponsor Agencies during bid evaluations and with ways to achieve LBCE Program goals.
6. Employ robust contract compliance measures to ensure that prime contractor commitments to LBE, SLBE, and/or VSLBE firms are met.

### **SECTION III. REPORTING AND OTHER REQUIREMENTS**

#### **A. Reporting Requirements**

Alameda CTC shall submit an LBCE Utilization Report to the Commission on an annual basis. The report shall include expenditures made by Alameda CTC and its Sponsor Agencies to LBE, SLBE, and VSLBE firms during the reporting period. The expenditures will show award amount and payments to the prime contractors and their respective subcontractors by contract type (e.g., construction contract or professional services contract) and certification status.

The Sponsor Agencies shall provide this information on a semi-annual basis or when requesting reimbursement from Alameda CTC, whichever occurs first, regardless of whether or not such contracts are subject to the LBCE Program goal requirements. The information shall list the total payments made on each active contract during the reporting period, in addition to awards, modifications, and payments to all LBE, SLBE, VSLBE prime and subcontractors at all tiers of the contract.

#### **B. Records Maintenance**

The awarding agency (Alameda CTC or its Sponsor Agency) shall maintain accurate records for each contract awarded. The records shall include dollar values, the nature of the goods or services to be provided, the name of the prime contractor to which the contract was awarded, and the effort the prime contractor employed to solicit bids from LBE, SLBE and/or VSLBE firms. In addition, the information shall include all subcontracts awarded by the prime contractor identifying for each subcontractor the dollar value, the nature of the goods or services provided, and the name of the subcontractor.

All prime contractors are required to maintain certain records and documents for a period of five (5) years after Alameda CTC's payment of the final invoice. These records will be made available for inspection upon request by an authorized representative of Alameda CTC and shall include the following:

1. The name and address of each first-tier subcontractor;
2. The name and business address, regardless of tier, of every LBE, SLBE and/or VSLBE subcontractor;
3. The date of payment and the total dollar amount paid to each subcontractor; and
4. The date of work performed by their own workforce along with the corresponding dollar value of the work claimed toward the applicable LBCE goal.

### **C. Prompt Payment**

The prime contractor shall be paid within thirty (30) calendar days of submitting a valid and complete invoice with all required supporting documentation. Accompanying the request for payment, a prime contractor will submit a Payment Request Form summarizing payments due. When paying the prime contractor, Alameda CTC or its Sponsor Agency will include a Payment Request Form that reflects all approved items. Prime contractors shall include an exact copy of this Payment Request Form with each payment to subcontractors.

The prime contractor shall submit acceptable subcontractors' invoices with each Payment Request Form no later than thirty (30) calendar days after receipt of such invoices from its subcontractors.

Alameda CTC or its Sponsor Agency shall ensure that the clause(s) regarding prompt payment will be included in each contract subject to this LBCE Program, per Alameda CTC's Sample Contract Language requirements.

### **D. Penalties and Sanctions**

When a contract subject to this LBCE Program is awarded and Alameda CTC and/or Sponsor Agency has cause to believe that any bidder, prime contractor, or subcontractor has willfully failed to comply with any of the provisions of this LBCE Program, either Alameda CTC or the Sponsor Agency may conduct an investigation. In order to complete its investigation, Alameda CTC or Sponsor Agency may require reports, information and documentation from bidders, prime contractors, subcontractors, and/or the Sponsor Agency, as are reasonably necessary to determine compliance with the requirements of this LBCE Program.

Based on this investigation, if Alameda CTC, or the Sponsor Agency with the advice and consent of Alameda CTC, finds non-compliance, the investigating entity will provide the bidder or prime contractor with written notice that a determination of non-compliance has been made. The recipient of such written notice shall reply within thirty (30) calendar days concerning whether it wishes to file a protest of the determination. Alameda CTC or the Sponsor Agency shall review the protest for at least thirty (30) calendar days, but not more than one hundred twenty (120) calendar days from the date the protest is received. Alameda CTC or the Sponsor Agency may extend the review period for up to thirty (30) calendar days for good cause, consistent with applicable statutes.

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

1. Imposing a fine;
2. Suspending the contract until violation is remedied;
3. Terminating the contract; and
4. Disqualifying the bidder, contractor, subcontractor or other business from eligibility for providing goods or services to Alameda CTC for a period of up to three (3) years.

The Alameda CTC or the Sponsor Agency shall monitor the recipient's implementation of the agreement terms to ensure compliance.

If a bidder, prime contractor or subcontractor disputes a determination of non-compliance or any sanction imposed as a result of such a determination, the bidder, prime contractor or subcontractor may appeal Alameda CTC's or the Sponsor Agency's determination to the Commission. To be considered by the Commission, any such appeal must be submitted in writing to the LBCE Liaison

Officer and must be received within thirty (30) calendar days after issuance of the determination of non-compliance by Alameda CTC or the Sponsor Agency.

**E. Program Review**

This LBCE Program will be reviewed periodically by Alameda CTC. Alameda CTC may make changes to the LBCE Program as needed to implement the goals and objectives of the LBCE Program. Changes to the LBCE Program shall be submitted to the Commission for approval.

**F. Severability**

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

**G. Confidentiality**

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

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## APPENDIX A. DEFINITIONS

The terms used in this LBCE Program are defined in the list below, in alphabetical order.

**Alameda County Transportation Commission (Alameda CTC).** Alameda CTC is a joint powers agency which plans, funds and delivers a broad spectrum of transportation projects and programs to enhance mobility throughout Alameda County, as the successor to three previous agencies: Alameda County Transportation Authority (ACTA), Alameda County Transportation Improvement Authority (ACTIA), and Alameda County Congestion Management Agency (ACCMA). Alameda CTC is responsible for the administration of voter-approved Measure B and Measure BB sales taxes and other local funds for transportation improvements and the Congestion Management Program in Alameda County.

**Awarding Agency.** Alameda CTC or a Sponsor Agency responsible for advertising, awarding and administering a contract.

**Bid.** A quote, proposal, or offer by a contractor to provide labor, material, goods and/or services to Alameda CTC or a Sponsor Agency for a specified price.

**Capital Project.** A capital project (as differentiated from a program) specifically listed in the Measure B or Measure BB Transportation Expenditure Plans, or an individual project to which the Commission uses its discretion to allocate Measure B, Measure BB or VRF funds to fund any portion of the development or construction of that project. Projects funded through Sponsor Agency's direct local distribution funds are not included.

**Certification.** The process of granting a status to firms qualified in the LBCE Program through the submission of a completed application. A firm may qualify as an LBE, SLBE, or a VSLBE, which are further defined herein.

**Certification List.** List of certified LBE, SLBE, and VSLBE firms maintained by Alameda CTC and available to the public on Alameda CTC's website.

**Commercially Useful Function.** A responsibility of a business for carrying out a piece of contract work by actually performing, managing, and supervising the work involved or providing the materials, equipment, or supplies to Alameda CTC or a Sponsor Agency as required by bid solicitation. To perform a Commercially Useful Function, a business must perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own workforce, or the business must not subcontract a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved.

**Commission.** The governing body of Alameda CTC. The Commission is comprised of 22 members, with the following representation: All five Alameda County Supervisors, two representatives from the City of Oakland, one representative from each of the other 13 incorporated cities in Alameda County, one representative from the Alameda-Contra Costa Transit District, and one representative from the Bay Area Rapid Transit District.

**Construction Contract.** A legally binding agreement between Alameda CTC or a Sponsor Agency and a duly licensed person or firm to provide labor, materials, and/or equipment for Construction work.

**Construction Work.** Services performed by a duly licensed person or firm to build or construct structures, roadways, or roadway appurtenances for Alameda CTC or a Sponsor Agency.

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

**Contractor/Consultant.** A person or business entity with a current business license issued by a city or county that undertakes a contract to provide materials or labor to perform services or complete a job.

**Fixed Place of Business.** A fixed office, place, site, structure, or other similar facility, through which an individual or firm engages in a trade or business. For this purpose a fixed place of business shall include, but not be limited to, a designated office space; a factory; a store or sales outlet; or a workshop. A firm shall not be considered to have a fixed place of business merely because such individual or firm uses another person's office or fixed place of business, if such trade or business activities are relatively sporadic or infrequent, taking into account what is normal industry practice for that trade or business.

**Good Faith Efforts (GFE).** The steps set forth in Appendix C of this LBCE Program undertaken to comply with the goals and requirements imposed by Alameda CTC for participation of LBE and SLBE firms as a subcontractor on construction contracts.

**GFE Points.** The evaluation methodology employed on a construction bid to determine if a business meets the LBE or SLBE goals or made an acceptable effort towards attaining the goals established.

**Joint Venture.** An association of two or more individuals or entities for the purpose of engaging in a specific business enterprise for profit.

**Local Business Contract Equity (LBCE) Liaison Officer.** Alameda CTC's LBCE Liaison Officer is the agency representative primarily responsible for implementing all aspects of the LBCE Program.

**Local Business Enterprise (LBE).** An Alameda County business that meets LBE Criteria and is certified by the Alameda CTC.

**LBE Goal.** The targeted percentage of participation by LBE firms, as established by Alameda CTC, for contracts which are awarded by Alameda CTC and/or its Sponsor Agencies which are subject to this LBCE Program.

**Measure B.** The local initiatives approved by the voters of Alameda County in 1986 and 2000 to levy a one-half (1/2) cent sales and use tax on purchases within the County in order to finance certain transportation-related projects and programs as set forth in the Transportation Expenditure Plans that supported the measures which are incorporated by reference into this LBCE Program. The measures authorized the creation of Alameda CTC's predecessor agencies to administer the



implementation of Measure B. A copy of both Measure B documents, including the Transportation Expenditure Plans, are available at Alameda CTC's office and on its website.

**Measure BB.** The local initiative approved by Alameda County voters on November 4, 2014, to levy a one-half (1/2) cent sales and use tax through March 31, 2022 and thereafter a one cent sales and use tax through March 31, 2045 on purchases within the County to finance certain capital transportation projects and programs as set forth in the 2014 Transportation Expenditure Plan which outlines essential transportation improvements in every city throughout Alameda County and is incorporated by reference into this LBCE Program. A copy of Measure BB documents, including the Transportation Expenditure Plan, are available at Alameda CTC's office and on its website.

**North American Industry Classification System (NAICS).** The standardized system that classifies business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. The NAICS industry codes define establishments based on the activities in which they are primarily engaged.

**Participation.** Instance in which a prime contractor utilizes one or more LBE, SLBE, and/or VSLBE firms to meet Alameda CTC's LBE and SLBE subcontracting requirements. Prime contractors may count towards its subcontracting goals only those expenditures to LBE, SLBE, and VSLBE firms that perform a Commercially Useful Function.

**Partner Certifying Agencies.** Alameda County certifying agencies which work cooperatively with Alameda CTC in its efforts to certify Alameda County businesses under the LBCE Program.

**Prime Contractor/Prime Consultant.** Any person(s), firm, partnership, corporation, or joint venture who submits a bid or proposal and/or enters into a contract with Alameda CTC or a Sponsor Agency to provide goods and/or perform construction or professional services. Prime contractors shall perform at least thirty percent (30.0%) of construction work or professional services on a contract.

**Principal Business Activity Code.** A code designed to classify an enterprise by the type of activity in which it is engaged to facilitate the administration of the Internal Revenue Code. The principal business activity codes are based on the North American Industry Classification System.

**Professional Services.** Labor, materials, or equipment for professional services including, but not limited to, architects, engineering and construction-related services.

**Small Local Business Enterprise (SLBE).** An LBE with annual gross revenues, averaged over the most recent three (3) tax years, that does not exceed the U.S. Small Business Administration (SBA) small business size standard for its principal business activity.

**SLBE Goal.** The targeted percentage of participation by SLBE firms, as established by Alameda CTC, for contracts awarded by Alameda CTC and/or its Sponsor Agencies which are subject to this LBCE Program.

**Sponsor Agency.** Any public entity receiving Measure B, Measure BB, VRF, and/or other local funds from Alameda CTC to implement projects. Please refer to Appendix B for Responsibilities of Sponsor Agencies.

**Subcontractor/Subconsultant.** Any individual, partnership, corporation, firm, 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 Alameda CTC or a Sponsor Agency, including but not limited to truckers, manufacturers, suppliers of goods and/or services, and owner-operators of equipment.

**U.S. Small Business Administration (SBA) Small Business Size Standard.** A small business size standard determined by the U.S. SBA that represents the largest the gross revenues of a business (including its subsidiaries and affiliates) may be and still remain classified as a small business. SBA has established a Table of Small Business Size Standards which is matched to the North American Industry Classification System (NAICS) for industries.

**Vehicle Registration Fee (VRF).** Alameda County VRF Program that was approved by the voters in November 2010. The fee generates revenues through a \$10 per year vehicle registration fee.

**Very Small Business Local Enterprise (VSLBE).** An SLBE with annual gross revenue, averaged over the most recent three (3) tax years, which does not exceed \$3,500,000.

**VSLBE Goal.** The targeted percentage of participation by VSLBE firms, as established by Alameda CTC, for contracts awarded by Alameda CTC and/or its Sponsor Agencies which are subject to this LBCE Program.

## **APPENDIX B. RESPONSIBILITIES OF SPONSOR AGENCIES**

Sponsor Agencies' responsibilities for contracts that are subject to the LBCE Program are as follows:

1. Advertise, award and administer any professional services or construction contract on capital projects not performed by the Sponsor Agency's own forces.
2. Include required provisions verbatim in the procurement document and subsequent contract for professional service and construction contracts (see Alameda CTC's Sample Contract Language for sample language and requirements).
3. Invite Alameda CTC staff and/or consultants to participate as a voting member in the selection of professional consultants and furnish copies of the procurement documents (e.g., Request for Proposals and Invitation for Bids) and contracts to Alameda CTC for review prior to approval by the Sponsor Agency on contracts utilizing Alameda CTC funds.
4. Advertise, award, and administer the construction and utility relocation contracts for Capital Projects in accordance with the applicable requirements of the Local Agency Public Construction Act and the California Labor Code, including its prevailing wage provisions. The Sponsor Agency shall obtain applicable wage rates from the California Department of Industrial Relations and shall adhere to the applicable provisions of the California Labor Code. Violations shall be reported to the California Department of Industrial Relations.
5. Comply with Alameda CTC's LBCE Program when selecting all professional consultants and construction contractors, unless the Sponsor Agency has received approval from Alameda CTC for the Waiver of Goals provisions or for the use of the Sponsor Agency's own local business program.
6. Utilize applicable credits for evaluation when selecting all vendors on phases of the Capital Projects for non-construction contracts. In the event that LBE or SLBE goals are not met on construction projects, Sponsor Agency will require contractors and vendors to make GFE using the process set forth in this LBCE Program. In the event that LBE or SLBE goals are not met on professional services contracts, Sponsor Agency will ensure that evaluation criteria will be applied as set forth in this LBCE Program.
7. Work with Alameda CTC to achieve Alameda CTC's objectives and clarify the required participation goals in the specific agreement in the event that the Sponsor Agency is bound by other mandated contract participation requirements.
8. On capital projects where the Sponsor Agency hires a consultant to administer a phase of the work funded by Alameda CTC, the Sponsor Agency will provide Alameda CTC with a list of prime contractors and subcontractors showing tasks and dollar values, and Progress Reports by project phase, when requesting reimbursement or on a semi-annual basis, whichever comes first. These reports shall describe the following: current status of the capital project; actions and eligible costs expended or incurred since the last report; actions expected to be taken during the next month; an updated schedule with estimated completion timeframe; scope changes; capital project related issues; any unexpected legal, environmental, engineering or construction difficulties; notices of potential claim; business enterprise participation from prime contractors and first-tier subcontractors; and any additional relevant information requested by Alameda CTC.

## APPENDIX C. GOOD FAITH EFFORTS FOR CONSTRUCTION CONTRACTS

It is Alameda CTC's intent and policy to fulfill its goals for LBE and SLBE participation. If a bidder fails to meet the LBE or SLBE goals, Alameda CTC must determine whether the bidder made GFE to meet the LBE and SLBE goals. Efforts that are merely pro forma shall not be deemed GFE. Documentation of the contractor's GFE shall be submitted within four (4) calendar days of bid opening if the bidder does not meet the LBE and/or SLBE goals.

### **A. Good Faith Efforts Criteria**

The prime contractor's GFE to reach out to LBE and SLBE firms shall be determined by the level of effort put into achieving the eight (8) measures outlined below. Failure to meet LBE and SLBE goals will not by itself be the basis for disqualification or determination of non-compliance with the LBCE Program. However, failure to include supporting documentation of a GFE and failure to achieve 70 out of 100 GFE evaluation points will render the bid non-responsive and will result in its rejection. A prime contractor shall certify, in its bid documents, which of the following actions it took in order to establish that it made a reasonable GFE to meet Alameda CTC's LBE and SLBE goals:

1. Attend pre-bid meetings scheduled by Alameda CTC or its Sponsor Agency to inform all bidders of the LBCE Program requirements for the project for which the contract will be awarded. Alameda CTC must have a record of the prime contractor's signature on the attendance sheet. **GFE Points = 5**
2. Identify specific items of work to be performed by LBE and SLBE firms in order to increase the likelihood of meeting the LBE and SLBE Goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate LBE and SLBE participation. **GFE Points = 15**
3. Advertise, not less than ten (10) business days before the date the bids are opened, in one or more local daily or weekly newspapers, trade association publications, trade oriented publications, trade journals, or other appropriate media to solicit LBE and/or SLBE firms that are interested in participating in the project. **GFE Points = 10**
4. Provide written notice of interest in bidding LBE and SLBE firms. Written notice shall specify which items of work the prime contractor has identified pursuant to Item 2 above. This notice shall be provided to LBE and SLBE firms within five (5) calendar days after the pre-bid meeting. **GFE Points = 15**
5. Follow-up on the written notice of interest by contacting the owner or other manager of the LBE and SLBE firms to determine whether the enterprises were interested in performing specific items of the project. The prime contractor is required to document the follow-up activities and provide written documentation (including copies of all communications) stating the date and method of contact and the reason for not using the subcontractor. **GFE Points = 20**
6. Make the project plans, specifications, and requirements for the selected work items available for review by interested LBE and SLBE firms. The prime contractor is required to provide a list of all LBE and SLBE firms to whom the project information was made available, method of contact, and copies of notifications. **GFE Points = 5**

7. Where needed, advise and make an effort to assist interested LBE and SLBE firms in obtaining lines of credit, or required insurance. **GFE Points = 5**
8. Negotiate in good faith with LBE and SLBE subcontractors. The prime contractor shall provide evidence that negotiations with LBE and SLBE firms were completed in good faith by documenting and providing names, addresses, telephone numbers, and email addresses of LBE and SLBE firms that were considered. To the extent that the prime contractor negotiated with the LBE and SLBE firms and did not select them for the work, the prime contractor shall provide written documentation for rejecting LBE and SLBE bids.  
**GFE Points = 25**

## **B. Good Faith Efforts Review**

The GFE Evaluation Process consists of a two-tiered review process:

1. **Interdisciplinary Review Team:** The initial review/analysis of the GFE documents will be performed by Alameda CTC staff. This initial report will be presented to the Interdisciplinary Review Team (IRT), nominated by the Executive Director, which determines if a GFE was demonstrated. A written evaluation report will be submitted to all bidders, stating whether the apparent low bidder has complied with the GFE requirements. To protest the IRT decision, a bidder has five (5) business days from the date of the written evaluation report to file a written objection. In the event a hearing is deemed appropriate by the Executive Director, all bidders shall be given at least five (5) business days' notice of the hearing. The IRT shall make its findings within ten (10) business days after the hearing. The IRT's decision may be appealed by the bidder or other interested parties, as defined in the bid document.
2. **GFE Review Committee:** Review of a decision of the IRT that is appealed will be conducted by a GFE Review Committee (Committee), which will be comprised of two (2) Commission members and an outside independent appointee. The two (2) Commission members will be appointed by the Chair of the Commission. The outside independent appointee will be retained by the Alameda CTC's Executive Director. The Committee shall hold a hearing in Alameda County. All subcontractors listed on the Good Faith Efforts Report and all bidders and their subcontractors that participated in the bidding process will be given at least ten (10) business days' notice of the hearing. The Committee will review evidence at the hearing and other factors relevant to the case to determine whether the apparent low bidder made GFE to meet the LBE and SLBE goals. The Committee shall review and keep confidential any information revealing a prime contractor's proprietary interests and shall exclude the public from the hearing for that limited purpose. The Committee shall give all bidders and all subcontractors participating in bids on the project an opportunity to present evidence relating to the apparent low bidder's GFE to meet the LBE and SLBE goals. The Committee makes a final determination as to whether a GFE was demonstrated. Alameda CTC or Sponsor Agency will rely on the decision of the Committee, and Alameda CTC will hold the Sponsor Agency harmless for implementing the decision of the Committee.

**APPENDIX D.**  
**RESPONSIBILITIES OF LBCE LIAISON OFFICER**

Alameda CTC's LBCE Liaison Officer is responsible for implementing all aspects of the LBCE Program. The LBCE Liaison Officer has direct, independent access to the Executive Director of Alameda CTC concerning LBCE Program matters. The LBCE Liaison Officer may be assisted by staff and Alameda CTC consultants as necessary.

The specific duties and responsibilities of the LBCE Liaison Officer under this LBCE Program shall include, but not be limited to, the following:

1. Analyze and assess the available resources and evidence to establish and achieve overall annual program goals each year;
2. Develop, monitor and evaluate the LBCE Program, and prepare supplemental written procedures and guidelines to implement the LBCE Program;
3. Maintain and update the LBCE Program Certification List;
4. Oversee 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, and simplifying bonding, surety and insurance requirements;
5. Oversee the contract bid and award process, review contract specifications, ensure the staffing of pre-bid conferences to provide LBCE Program information and participate in the process of evaluating bids for contractor responsiveness, responsibility and GFE;
6. Monitor specific contract performance, payments, and actual participation;
7. Monitor overall participation, adjust the overall goals and means of achievement, assess areas of over-concentration of participation, identify ways to improve progress and reporting to Alameda CTC, as needed;
8. Refer LBE, SLBE and VSLBE firms to resources that provide technical assistance;
9. Oversee outreach to LBE, SLBE and VSLBE firms and community organizations to advise them of opportunities; and
10. Maintain all appropriate records and documentation of the LBCE Program, including gathering and reporting statistical data.