

SMALL BUSINESS PROGRAM

Policy Description (V09-01-11)

Amendment 1 (V11-16-12)

1. SMALL BUSINESS PROGRAM POLICY

It is the Policy of the San Francisco Bay Area Rapid Transit District (“BART”) to encourage the participation of Small Businesses in BART contracts. Accordingly, BART hereby adopts this Small Business (“SB”) Program pursuant to California Public Contract Code Section 2002. The purpose of the SB Program is to encourage and facilitate full and equitable participation by Small Businesses in BART construction, procurement, and services contracts and agreements that are awarded through a competitive process and are financed solely with local and state funds (“non-federal contracts”). As appropriate, the SB Program seeks to achieve these objectives on three levels: (1) BART’s award of Contracts and Agreements to SBs, (2) the award of First Tier Subcontracts to SBs by Prime Contractors, Suppliers, and Consultants, and (3) the award to Second Tier SB Subcontractors by First Tier Subcontractors.

2. FINDINGS

- **BART** enters into non-federal contracts and agreements for construction, procurement, and services. Many of the contracts and agreements in each of these areas afford opportunities for SBs to perform work as Contractors, Suppliers, Consultants, and as Subcontractors, Subsuppliers, and Subconsultants.
- **SBs** generate jobs, provide economic opportunity, and boost economic output throughout California and, in particular, in the counties in which BART operates and does business – Alameda County, Contra Costa County, City and County of San Francisco, and San Mateo County.
- **BART** desires to contribute to the growth and stability of the small business community.
- **BART** recognizes, and through the SB Program, works to address and mitigate the difficulties SBs may encounter when competing against larger more established businesses for BART contracts and agreements.
- **BART** recognizes that this SB Program is only applicable to non-federal construction, procurement, and services contracts, agreements such as repair services, technical support services, real estate support services, professional services agreements, and design-build contracts issued pursuant to Public Contract Code Section 20209.5, to be awarded through a competitive process where price and other factors are considered in the award.
- **BART** recognizes that Disabled Veterans Business Enterprises (“DVBES”) should be utilized to the extent possible in BART’s construction, procurement, and services contracts and agreements as part of the Small Business Program.

3. DEFINITIONS

- **“Agreement”** means an agreement between BART and a Consultant for services.
- **“Bid”** means the proposal or offer of the Bidder for the Construction or Procurement Contract when completed and submitted on the prescribed Bid Form.
- **“Bidder”** or “Proposer” means any individual, firm, partnership, joint venture, corporation, or combination thereof (collectively “firm”), submitting a Bid or Proposal for a contract or services agreement, acting directly or through a duly authorized representative.
- **“Consultant”** means a firm that has entered into an Agreement with BART.
- **“Contract”** refers collectively to Prime Construction Contracts, First Tier Subcontracts, and Procurement Contracts.
- **“Contractor”** means a Prime Construction Contractor awarded a construction contract by BART.
- **“Disabled Veterans Business Enterprise” or “DVBE”** means a firm that is listed as a Disabled Veterans Business Enterprise small business by the State of California, Department of General Services in its database for SBs found at www.dgs.ca.gov.
- **“First Tier Subcontract”** means a contract between a Prime Contractor and First Tier Subcontractor or Subsupplier.
- **“First Tier Subcontractor”, “Subcontractor”, or “Subsupplier”** means a firm that has been awarded a First Tier Contract by a Prime Contractor or a Supplier.

- **“Prime Construction Contract”** means a construction contract between BART and a Prime Contractor.
- **“Prime Construction Contractor” or “Contractor”** means a firm that has been awarded a Prime Construction Contract by BART.
- **“Procurement Contract”** means a contract between BART and a Supplier.
- **“Proposal”** means the offer of the Proposer for the Services Agreement, in response to BART’s request when completed and submitted on the prescribed Proposal Form.
- **“Second Tier Subcontractor”** means a firm that has been awarded a Subcontract by a First Tier Subcontractor.
- **“Small Business Enterprise” or “SB”** means a firm (including DVBES) listed as an SB by the State of California, Department of General Services in its database for SBs found at www.dgs.ca.gov.
- **“Subconsultant”** means a firm that has entered into a subcontract with a Consultant.
- **“Subcontract”** means a Contract entered into between a Contractor, Supplier, or Consultant with a Subcontractor, Subsupplier, or Subconsultant, respectively.
- **“Subsupplier”** means a firm that has entered into a Contract with a Supplier.
- **“Supplier”** means a firm that has been awarded a Procurement Contract by BART.

4. RESPONSIBILITIES AND DUTIES OF THE OFFICE OF CIVIL RIGHTS

(a) BART’s General Manager has designated the Department Manager of the Office of Civil Rights as the SB Liaison Officer. As SB Liaison Officer, the Department Manager is responsible for implementing and monitoring the SB Program,

coordinating with the District staff in implementing the SB Program, establishing participation goals in Contracts and Agreements where there are subcontracting opportunities for SBs, and making amendments to the SB Program, including alternative SB certification requirements, as needed, with the approval of the Deputy General Manager.

(b) Where Prime Construction Contractors, Suppliers, Consultants, or First Tier Subcontractors, where applicable, commit in their Bid or Proposal to utilize SB First or Second Tier Subcontractors in order to meet the applicable SB goal, the Office of Civil Rights shall monitor their performance to confirm that the SB utilization level presented in the Bid or Proposal is met throughout the life of the Contract or Agreement, including the substitution of SB Subcontractors and change orders, where appropriate.

5. QUALIFICATION AS AN SB AND DVBE

A Bidder or Proposer seeking an SB preference Contract or Agreement with BART, or a firm seeking to be recognized as an SB Subcontractor, Subsupplier, or Subconsultant, shall be qualified as an SB and be listed in the State of California, Department of General Services (“DGS”) database for SBs at www.dgs.ca.gov prior to the submission of the Bid or Proposal. A firm seeking to be recognized as a DVBE small business shall be qualified as a DVBE and shall be listed in the DGS database for SBs as a DVBE at www.dgs.ca.gov prior to submission of the Bid or Proposal.

6. SB PROGRAM ANNUAL LIMIT

An annual limit of \$2,000,000 will be available for the total dollar preferences allowed under the SB Program for each fiscal year for Contracts up to a maximum value of \$10,000,000. For Contracts over \$10,000,000, BART's Office of Civil Rights, in conjunction with the project sponsor, will determine on a Contract-by-Contract basis whether the Program will apply and if so, any applicable limits to the total dollar preference.

7. PRIME CONTRACTS AND AGREEMENTS ELIGIBLE FOR SB PREFERENCE

BART, may, at its sole discretion, designate specific Prime Construction Contracts, Procurement Contracts or Agreements with a maximum value of \$10,000,000, as eligible for an SB preference of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, up to a maximum of \$250,000, with the exact percentage applicable to a particular Contract or Agreement determined by BART. SB Prime Construction Contractors, Suppliers, or Consultants who bid on such Contracts or Agreements will be granted the percentage preference set by BART on their Bid or Proposal price only during evaluation for determining the award of the Contract or Agreement. However the actual Contract or Agreement awarded will be for the amount of the original bid or proposal.

8. CONTRACT-SPECIFIC SB FIRST TIER SUBCONTRACTOR PARTICIPATION GOALS

BART, in its sole discretion, may establish, for a particular Prime Construction Contract, Procurement Contract, or Agreement, with a value above \$10,000,000, an SB Participation Goal. This SB Participation Goal shall be expressed as a percentage of the total Bid or Proposal price for a Contract or Agreement. The Bidder or Proposer that meets the SB Participation Goal will be eligible for a preference of up to 5% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, up to a maximum of \$1,000,000, only during evaluation for determining the award of the Contract or Agreement. Bidders that do not meet the SB Participation Goal would not be eligible for the preference. However, the actual Contract or Agreement awarded will be for the amount of the original Bid or Proposal.

9. CONTRACT-SPECIFIC SB SECOND TIER SUBCONTRACTOR PARTICIPATION

BART, in its sole discretion, may recognize Second Tier SB firms towards meeting the Contract SB Participation Goal on designated prime construction contracts subject to subsections (a) through (c), below. The Prime Contractor shall include provisions in its First Tier Subcontracts providing for the following:

(a) A provision requiring that the First Tier Subcontractor provide copies of the SB Second Tier subcontracts to BART, and provide other documentation deemed needed by BART to confirm the SB participation.

(b) A provision requiring that the First Tier Subcontractor provide BART with the information designated by BART which BART deems necessary for determining whether the SB Second Tier Subcontractor is performing work on the Contract, including reports on payments made to SB Second Tier Subcontractors.

(c) A provision requiring the First Tier Subcontractor to make good faith efforts to replace an SB Second Tier Subcontractor with another SB firm if a substitution is deemed necessary.

10. SB SUBCONTRACTING PARTICIPATION GOALS IN DESIGN-BUILD CONTRACTS

For design-build contracts issued pursuant to Public Contract Code Section 20209.5, BART may establish three SB Participation Goals for services, procurement, and construction respectively.

The Proposers for the design-build contracts may be required to meet the SB Participation Goal for services and commit to meeting the SB Participation Goals for procurement and construction in order to be eligible for a preference of up to 5%, which will be credited in the price portion of the Proposal. BART staff will monitor the Contractor's performance of the Contract following award to ensure that the Contractor meets the SB Participation Goals for services, procurement and construction.

11. THE CONTRACTOR'S SB OBLIGATIONS AFTER THE AWARD OF THE CONTRACT

In Contracts and Agreements with an SB Participation Goal, the Contractor shall take all reasonable steps to ensure that its SB Subcontractors or Subconsultants are able to successfully perform their subcontract responsibilities.

12. SUBSTITUTION OF SBs

Should the Contractor, Supplier, Consultant or First Tier Subcontractor, where applicable, establish that the substitution of any SB Subcontractor, Subsupplier, Subconsultant or, where applicable, Second Tier Subcontractor, is necessary, the Contractor, Supplier, Consultant or First Tier Subcontractor, shall, subject to the approval of BART, replace the affected SB Subcontractor, Subsupplier or Subconsultant with another SB Subcontractor, Subsupplier or Subconsultant or demonstrate that it made good faith efforts to do so consistent with the following terms:

- ***In determining whether*** good faith efforts have been made, BART will consider the steps taken by the Contractor, Supplier, Consultant, or First Tier Subcontractor, where applicable, on the actions listed below. These steps are reflective of good faith efforts taken by a Contractor, Supplier, Consultant, or First Tier Subcontractor seeking to replace an SB with another SB in order to maintain its commitment to meet the SB Participation Goal.
- ***Identify and select*** specific subcontracting areas of the Contract or Agreement to be performed by SB Subcontractors, Subsuppliers or Subconsultants.

- **Advertise** the subcontracting opportunity in one or more daily or weekly newspapers, small business association publications, trade-oriented journals or other media specified by BART. Advertise in publications, newspapers, and other media likely to be available to DVBEs. The required advertising shall be completed sufficiently in advance of the selection decision to allow potential SB Subcontractors, Subsuppliers or Subconsultants a reasonable time in which to bid for or otherwise seek the Subcontract;
- **Provide** written solicitation notice of subcontracting opportunities to a reasonable number of SB Subcontractors, Subsuppliers or Subconsultants with enough time prior to the selection decision to allow the SBs to offer a proposal.
- **Follow up** initial solicitations to SB Subcontractors, Subsuppliers or Subconsultants to confirm whether the potential SB Subcontractors are interested in performing the Subcontracts;
- **Provide** interested SB Subcontractors, Subsuppliers or Subconsultants with information about the proposal, plans, specifications, and/or requirements for the subcontracting work to be performed.
- **Request** assistance in identifying potential SB Subcontractors, Subsuppliers, or Subconsultants from community organizations, contractor groups, DVBE organizations, or BART's Office of Civil Rights;
- **Offer** assistance with regard to bond or insurance requirements for SBs;
- **Negotiate** in good faith with SB Subcontractors, Subsuppliers or Subconsultants who express an interest in subcontracting, as appropriate.

13. SB PARTICIPATION REPORTS

Contractors, Suppliers and Consultants shall submit on a form provided by BART a monthly SB Subcontractor Utilization Report to the Office of Civil Rights showing the total amount paid to date to each SB.

14. FAILURE TO ADHERE TO SB REQUIREMENTS

The failure of a Contractor, Supplier, or Consultant, or First Tier Subcontractor, where applicable, to adhere to any of the requirements of the SB Program shall constitute a material breach of the Contract or Agreement and may result in BART terminating the Contract or Agreement or imposing appropriate sanctions. Among other things, BART may withhold payments or portions of payments to the Contractor, Supplier, or Consultant or undertake other enforcement measures due to the failure of the Contractor, Supplier, or Consultant or where applicable, the First Tier Subcontractors, to comply with the SB participation requirements. Such payments withheld will be released once the Contractor, Supplier, or Consultant or its First Tier Subcontractors, conform with the SB participation requirements.