

VENTURA COUNTY TRANSPORTATION COMMISSION

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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OBJECTIVES / POLICY STATEMENT (Section 26.1, 26.23)

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

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

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

The VCTC Interim Executive Director has been delegated as the DBE Liaison Officer. In that capacity, the Interim Executive Director is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by VCTC in its financial assistance agreement with the U.S. DOT.

VCTC has disseminated this policy statement to VCTC Commissioners (governing board) and all of the components of our organization by posting the statement at VCTC offices and including it in staff reports. We have distributed this statement to DBE and non-DBE business communities that perform work for VCTC on DOT-assisted contracts via our website goventura.org, general circulation media, and solicitations for goods and services.

Mark Watkins, Interim Executive Director

Date: _____

SUBPART A – GENERAL REQUIREMENTS

1. OBJECTIVES (Section 26.1)

The objectives are found in the policy statement on the first page of this Program.

2. APPLICABILITY (Section 26.3)

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

3. DEFINITIONS (Section 26.5)

VCTC will adopt the definitions contained in Section 26.5 for this Program. Some of the most common terms are defined below:

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

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

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

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

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

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

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

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

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

4. NON-DISCRIMINATION REQUIREMENTS (SECTION 26.7)

VCTC will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin. The 49 CFR part 26 regulations are available in Attachment 6.

5. RECORD KEEPING REQUIREMENTS (SECTION 26.11)

Reporting to DOT (Section 26.11(a)): VCTC will report DBE participation to DOT by transmitting the Semi-annual DBE "Uniform" report on June 1 and December 1 of each year (section 26.11(a))

Bidders List (Section 26.11(c)): VCTC will create a Bidders List consisting of information about all DBE and non-DBE firms and sub-contractors that bid or quote on DOT-assisted contracts. The purpose of this requirement is to help VCTC set overall DBE goals. VCTC will obtain the following information about DBE and non-DBE contractors and sub-contractors who seek to work on DOT-assisted contracts:

- (i) Firm name;
- (ii) Firm address;
- (iii) Firm's status as a DBE or non-DBE;
- (iv) Age of the firm; and
- (v) The annual gross receipts of the firm. VCTC will obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-\$2 million; \$2-\$5 million; \$5-\$10 million; greater than \$10 million).

VCTC will collect the data for all bidders before or after the bid due date.

6. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE (SECTION 26.13)

Assurance (Section 26.13(a)): VCTC has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

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

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance (Section 26.13(b)): VCTC will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

1. DBE PROGRAM UPDATES (SECTION 26.21)

Since VCTC has received a grant of \$250,000 or more in FTA planning capital and operating assistance in a federal fiscal year, VCTC will continue to carry out this Program until all funds from DOT financial assistance have been expended. VCTC will provide to DOT updates representing significant changes in the Program.

2. POLICY STATEMENT (SECTION 26.23)

The Policy Statement is elaborated on the first page of this program

3. DBE LIASON OFFICER (DBELO) (SECTION 26.25)

Mark Watkins, the VCTC Interim Executive Director, shall serve as the DBE Liaison Officer (DBELO). The DBELO can be contacted at: 751 E. Daily Drive, Suite 420, Camarillo, CA 93010, (805) 642-1591, mwatkins@goventura.org. The DBELO shall develop, manage and implement the Program on a day-to-day basis, provide DBEs with technical assistance, and disseminate information on available business opportunities so that DBEs will be provided an equitable opportunity to bid on VCTC-administered contracts. The VCTC Interim Executive Director shall have full authority for the implementation and administration of this program, including efforts to contact and assist DBEs, maintain a close working relationship with local DBE affiliates, and to develop information and recommendations in the development of bid packages and procurement plans. An organization chart displaying the DBELO's position in the organization is found in Attachment 1.

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

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

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

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

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

4. DBE FINANCIAL INSTITUTIONS (SECTION 26.27)

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

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

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

5. PROMPT PAYMENT PROVISIONS (SECTION 26.29)

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

a. Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement

or payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction, and other remedies of that Section. This requirement shall not be construed to or limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

b. Prompt Payment of Withheld Funds to Subcontractors

Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 3-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

6. DBE DIRECTORY (SECTION 26.31)

VCTC primarily utilizes Caltrans directory of Certified DBE Firms available at <https://dot.ca.gov/programs/civil-rights/dbe-search>. Bidders shall be informed of Caltrans Supportive Service Assistance Center.

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

7. OVER CONCENTRATION OF DBEs (SECTION 26.33)

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

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

8. BUSINESS DEVELOPMENT AND MENTOR-PROTÉGÉ PROGRAMS (SECTION 26.35)

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

9. SMALL BUSINESS PARTICIPATION (SECTION 23.39)

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

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

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

A Small Business is one that:

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

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

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

- a. VCTC's Grant Administration staff will continue to conduct regular reviews of VCTC and subrecipient procurements, to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). In particular, recognizing the vast majority of VCTC and subrecipient procurements are for transit operations contracts, consideration will be given for any operations contract procurement involving 20 or more buses not maintained in a city-owned facility, to allow consideration of bids for portions of the contracted service.
- b. VCTC Grant Administration staff will ensure VCTC and subrecipient vendor lists used for FTA-funded procurements identify Small Businesses who wish to participate in such procurements by providing their services and/or capabilities to prime contractors. This allows prime contractors who are looking for subcontractors to request from the list, Small Business Firms' interest and specializations. This strategy greatly enhances the use of Small Businesses and provides a tool for future partnerships between VCTC's prime and Small Business communities.
- c. VCTC will make every effort to provide notices of procurements in various industry publications, to the degree feasible based on cost considerations. These media will provide additional tools and resources to promote and strengthen competitiveness, marketability and participation of small businesses, minority and women-owned firms within the contracting programs of VCTC and its subrecipients.
- d. VCTC will for Small Businesses employ the same race-neutral measures it uses with DBEs to facilitate participation. These strategies include, but are not limited to, arranging solicitations to facilitate small business participation; assisting, as necessary, during the procurement process to overcome limitations; and assisting as appropriate with management and accounting practices.

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

10. MONITORING AND ENFORCEMENT MECHANISMS (SECTION 26.37)

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

VCTC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. Bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. Consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 2 lists the regulation, provisions, and contract remedies available to VCTC in the event of non-compliance with the DBE regulation by a participant in VCTC's procurement activities.
3. Provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by requiring reports from contractors using DBEs tallying actual payments to each DBE.
4. Will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Monitoring Payments to DBEs

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

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

Reporting Requirements

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

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. SET-ASIDES OR QUOTAS (26.43)

VCTC does not establish DBE quotas or set-asides in any way in the administration of this DBE Program.

2. OVERALL GOALS AND METHODOLOGY (26.45)

VCTC shall triennially set overall DBE Program goals for DOT-assisted projects in accordance with the provisions of 49 C.F.R. Section 26.45. A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this Program. This section of the Program will be updated triennially or as directed by DOT.

In accordance with Section 26.45 (f), VCTC will establish a triennial overall DBE goal and will submit its overall goal to DOT on August 1st of every third year. Before establishing the overall goal each year, VCTC will consult with stakeholders located within the Local Market Area. Stakeholders to be consulted include, but not limited to, minority, women's and general contractor groups, community organizations, and other officials and organizations as per Section 26.45 (g)(1)(i).

Following this consultation, VCTC will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the VCTC office and VCTC website for 30 days following the date of the notice, and informing the public that VCTC and DOT will accept comments on the goals for 45 days from the date of the notice. In accordance with Section 26.24 (g)(1)(ii), VCTC will publish the proposed overall goal on the official VCTC internet website. The notice will also be published in local newspapers and mailed to stakeholders. Normally, VCTC will issue this notice by June 1st of every third year. VCTC will inform the public of the proposed overall goal and will provide the following options for submitting comments:

- Mailing address
- Email address
- Telephone number
- Public meeting
- Additional meetings as requested

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

VCTC's overall goal submission to DOT will include a summary of information and comments received during the public participation process and VCTC's responses.

VCTC will begin using the overall goal on October 1 of each year, unless VCTC receives other instructions from DOT. If VCTC establishes a goal on a project basis, VCTC will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

3. SHORTFALL ANALYSIS (SECTION 29.47(c))

If the awards and commitments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, VCTC will:

- a. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- b. Establish specific steps and milestones to correct the problems identified in the analysis to enable VCTC to fully meet the overall goal for the new fiscal year.

4. DBE ELIGIBILITY

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

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

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

5. RACE NEUTRAL MEANS (26.51)

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

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

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

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

6. TRANSIT VEHICLE MANUFACTURERS (TVM) GOALS (SECTION 26.49)

VCTC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section (26.49(a)). Alternatively, VCTC may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the Program. VCTC will submit to FTA

within 30 days of making the award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

7. BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS PARTICIPATION (SECTION 26.51(a-c))

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4. VCTC intends to use race-conscious means to achieve the overall goal for the federal fiscal year period 2022 – 2024. The overall goal is set at 3.57% with the race- and gender-neutral goal set at 1.48% and the race-conscious goal set at 2.09%. This section of the program will be updated every third year.

8. CONTRACT GOALS (SECTION 26.51(d-g))

VCTC will use contract goals to meet any portion of the overall goal that VCTC does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meetings any portion of VCTC's overall goal that is not projected to be met through the use of race-neutral means.

VCTC will establish goals only on those DOT-assisted contracts that have subcontracting possibilities. VCTC need not establish a contract goal on every such contract, and the size of contract goals will be adopted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

VCTC will express the contract goals as a percentage of the Federal share of a DOT-assisted contract.

9. GOOD FAITH EFFORTS IN CONTRACT PROVISIONS (SECTION 26.53)

Demonstration of Good Faith Efforts (Section 26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26.

Peter De Hann, VCTC Programming Director, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

VCTC will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before VCTC commits to the performance of the contract by the bidder/offer.

Information to be Submitted (Section 26.53(b))

VCTC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work each named DBE firm will perform;
- c. The dollar amount of participation by each named DBE firm;
- d. Written and signed documentation of the bidder's commitment to use a DBE subcontractor(s) it has submitted with its bid; and
- e. Written and signed confirmation from the DBE that it is participating in the contract in accordance with the bidder's commitment to it.
- f. If the contract goal is not met, evidence of good faith efforts.

The above solicitation elements are due no later than 5 days after a bid opening. Forms for demonstration of good faith efforts are available in Attachment 3.

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

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

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

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

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

Administrative Reconsideration (Section 26.53(d))

A bidder/offeror may request administrative reconsideration within 30 days of being informed by VCTC that the bidder/offeror is not responsive because it has not documented sufficient good faith efforts. Bidder/offerors should make this request in writing to Mark Watkins, VCTC Interim Executive Director, 751 E. Daily Drive, Suite 420, Camarillo, CA 93010, (805) 642-1591,

mwatkins@goventura.org. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with VCTC's reconsideration official to discuss the issue the issue of whether it met the goal or made adequate good faith efforts to do so. VCTC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to DOT.

10. BIDDERS FAILING TO ACHIEVE DBE GOALS (SECTION 26.55)

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

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

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

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

If the contractor executes an agreement with a subcontractor which it reasonably believes may be considered a DBE, the contractor shall continue to receive credit for the work actually

performed by the subcontractor, even after VCTC makes a determination that the subcontractor is not eligible for DBE certification. However, that portion of the subcontractor's work actually performed after VCTC makes a determination that the subcontractor is not eligible for DBE certification may not be counted toward VCTC's overall DBE Program goals.

11. COUNTING DBE PARTICIPATION (SECTION 26.55)

Once a firm has been certified by Cal-DOT or other appropriate recipient of DOT-assistance as a bona fide DBE, the total dollar value of the work actually performed by the DBE may be counted toward the Program goal, provided the DBE performs a commercially useful function. In determining what proportion of the expenditure shall be applied towards the DBE goal, the criteria set forth in 49 CFR Section 26.55 and the following shall apply:

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

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

12. PUBLIC PARTICIPATION AND OUTREACH

- a. Advertisement of Notice to Bidders

VCTC, in addition to any advertising required by law for construction bids, will provide bid information to the following:

- i. Local and regional DBE focused publications, containing project description, pre-bid meeting date, bid opening date and a notice to disadvantaged contractors and/or subcontractors indicating that they may obtain lists of prospective contractors as well as contract specifications from VCTC.
 - ii. Disadvantaged contractors and/or subcontractors who are identified as firms that may render the necessary construction activity.
 - iii. The following disadvantaged oriented contractor associations:
 - Minority Contractors Association
 - Ventura County Contractors Association
 - American Subcontractors Association and
 - Southern California Minority Supplier Development Council
- b. Pre-bid Conference
- The contract specifications for construction projects shall designate the time, date, and place for the pre-bid conferences, if any. Prospective contractors shall be provided with an opportunity to identify their subcontracting requirements. In addition, the conditions of this policy and other equal employment requirements, project details and bidding procedures shall be discussed.
- c. Outreach Techniques
- VCTC employs various outreach techniques designed to facilitate achievement of the Program goals. Such techniques may include, but may not be limited to:
- i. Simplifying bid packages and requests for proposals so as to increase prospective DBE participation;
 - ii. Providing assistance to DBEs in overcoming barriers such as the inability to obtain funding, financing or technical assistance;

SUBPART D – CERTIFICATION STANDARDS

1. STATEMENT OF NON-DISCRIMINATION (SECTION 26.61)

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

"The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1 001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)."

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

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

2. LEGAL REMEDIES (SECTION 26.61)

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

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

3. ADMINISTRATIVE REMEDIES (SECTION 26.61)

VCTC requires that its contracts with prime contractors contain the following provision:
"CONTRACTOR's failure to make good faith efforts to comply with VCTC's DBE program shall be

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

4. CERTIFICATION PROCESS AND DBE PROGRAM COMPLIANCE (SECTION 26.73)

VCTC will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all eligibility standards.

For information about the certification process or to apply for certification, firms should contact:

Caltrans
Office of Business & Economic Opportunity
Attn: Certification Unit 1823 14th Street
Sacramento, CA 95811

Or visit the following website: <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

The DBE Certification application package and instructions is available in Attachment 5.

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

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

SUBPART E – CERTIFICATION PROCEDURES

1. UNIFIED CERTIFICATION PROGRAM (SECTION 26.81)

VCTC utilizes the Unified Certification Program (UCP) administered by the California Department of Transportation (Caltrans). The UCP meets all of the requirements of this section. Caltrans maintains the UCP and updates the DBE firms on a regular basis. The UCP utilizes a database on the Caltrans website for anyone to access to search for DBE firms available at <https://ucp.dot.ca.gov/licenseForm.htm>

SUBPART F – COMPLIANCE AND ENFORCEMENT (SECTION 26.109)

Information, Confidentiality, Cooperation

VCTC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, State and local law.

Notwithstanding any contrary provisions of State or local law, VCTC will not release personal financial information submitted in response to the personal net worth requirements to a third party (other than DOT) without the written consent of the submitter.

Confidentiality of Information on Complainants

The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

Cooperation

All DBE Program participants (including, but not limited to, VCTC, DBE firms and applicants for DBE certification, complaints and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and VCTC compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved pursuant to Section 26.109 (c) including findings of non-responsibility for future contracts.

Intimidation and Retaliation

VCTC, contractors, or any other participants in the DBE Program, must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Monitoring Payments to DBEs

VCTC will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of VCTC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

VCTC will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

Attachment 1 - Organization Chart

Attachment 2 - Monitoring and Enforcement Mechanisms

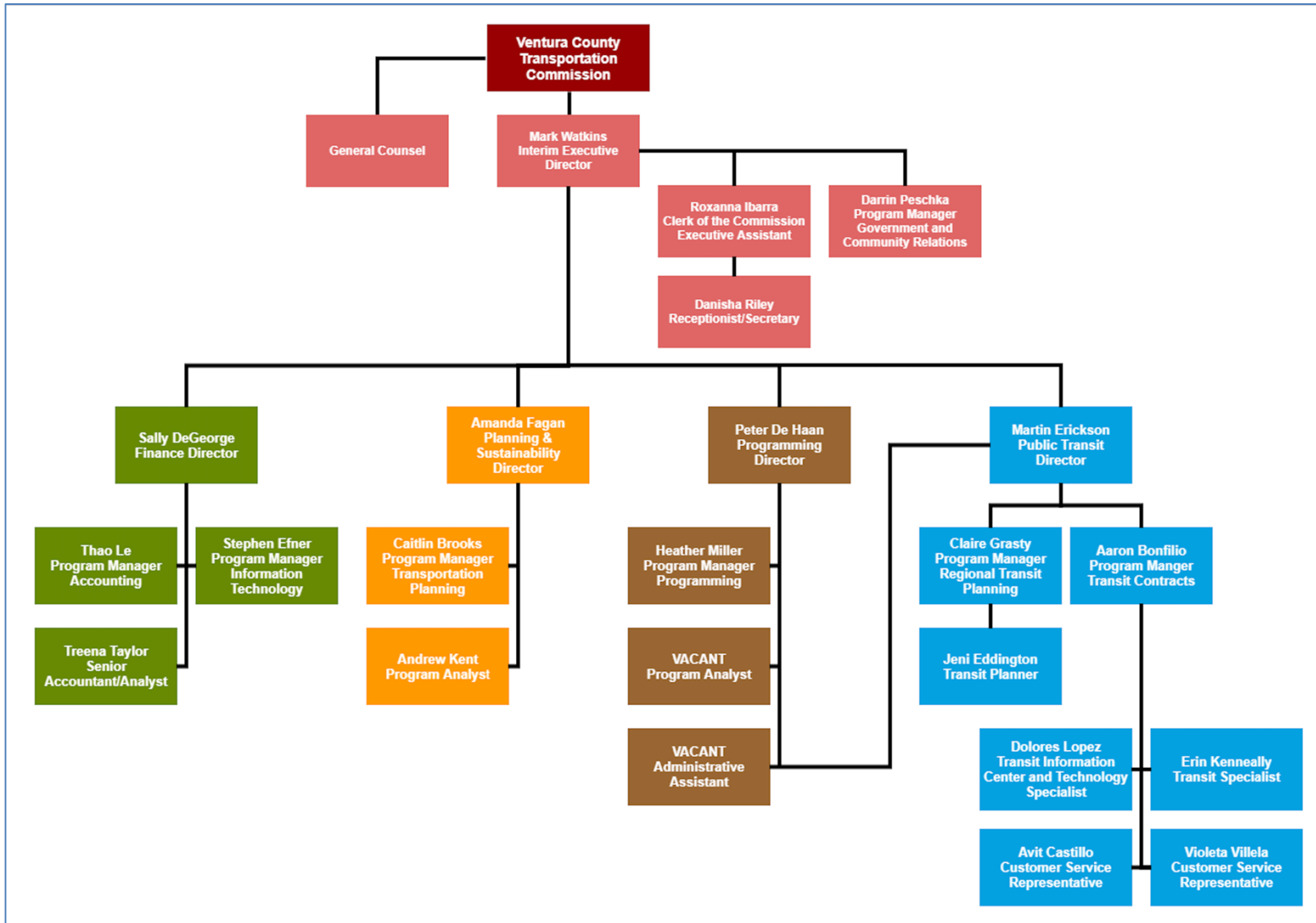
Attachment 3 - Form 1 & 2 for Demonstration of Good Faith Efforts

Attachment 4 - Overall Goal Calculation and Breakout of Estimated Race-Neutral & Race-Conscious Participation

Attachment 5 – DBE Certification Application

Attachment 6 - Regulations: 49 CFR part 26

Attachment 1 – Organizational Chart



Attachment 2 – Monitoring and Enforcement Mechanisms

VCTC has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Suspension or debarment proceedings pursuant to 49 CFR part 26
3. Enforcement action pursuant to 49 CFR part 31
4. Prosecution pursuant to 18 USC 1001.

Attachment 3 – Form 1 and 2 for Demonstration of Good Faith Efforts

[Forms 1 and 2 should be provided as part of the solicitation documents.]

Contract Name: _____

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ (Signature) _____ (Title)

Attachment 3 (continued)

FORM 2: LETTER OF INTENT

Contract Name: _____

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____ (Signature) _____ (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

Attachment 4 – Overall Goal Calculation and Breakout of Estimated Race-Neutral & Race-Conscious Participation

VCTC has established an overall goal of 3.57% for federal fiscal years 2022 – 2024. The race- and gender-neutral goal is set at 1.48% and the race-conscious goal at 2.09%. The overall goal calculation and the breakout of estimated race-neutral and race-conscious participation is available at: https://w3b5w9f7.rocketcdn.me/wp-content/uploads/2021/07/VCTC-DBE-Goal-FFY-2022_2024-August-2021.pdf

Attachment 5 – DBE Certification Application

The Caltrans DBE Certification Application and Instructions are available on the following website:
<https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

Attachment 6 – Regulations: 49 CFR 26

An electronic version of 49 CFR Part 26 regulation can be found on the U.S. Government Publishing Office (GPO) website at the following location:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.26&rqn=div5>