

## SMALL BUSINESS PROGRAM

Policy Description (V09-01-11)

Amendment 1 (V11-16-12)

Amendment 2 (05-11-17)

Amendment 3 (09-14-17)

Amendment 4 (02-27-19)

Amendment 5 (04-02-19)

### 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 Lower Tier SB Subcontractors by First or Other Tier Subcontractors. BART shall implement and monitor this SB Program to prevent potential fraudulent behavior on the part of a Contractor, Supplier, Consultant, Subcontractor, Subsupplier, Subconsultant, or individual.

### 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 and procurement Contracts and services A g r e e m e n t s , such as repair services, technical support services, real estate support services, and professional services Agreements, as well as 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 Veteran Business Enterprises (“DVBES”) should be utilized to the extent possible in BART’s construction, procurement, and services Contracts and Agreements as part of the SB Program.
- **BART** recognizes that Lesbian, Gay, Bisexual, and Transgender Business Enterprises (“LGBTBEs”) should be utilized to the extent possible in BART’s construction, procurement, and services Contracts and Agreements as part of the SB 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.
- **“Broker”** means a firm which arranges sales of goods or services from other firms absent its own inventory of those goods or its own forces to conduct the services.
- **“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 Veteran Business Enterprise”** or “DVBE” means a firm that is certified as a Disabled Veteran Business Enterprise and as a Small Business by the State of California, Department of General Services and in its database for SBs found at [www.dgs.ca.gov](http://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.
- **“Lesbian, Gay, Bisexual, and Transgender Business Enterprise”** or “LGBTBE” means a firm that is certified as an LGBTBE firm by a certifying body listed in Appendix B and certified as a Small Business by the State of California, Department of General Services,

found in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov).

- **“Local Disabled Veteran Business Enterprise”** or “Local DVBE” means a firm that is certified as a DVBE and as a Small Business by the State of California, Department of General Services, found in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov), and whose principal place of business is located in one of the three counties of Alameda, Contra Costa, or San Francisco.
- **“Local LGBTBE”** means a firm certified as an LGBTBE by a certifying body listed in Appendix B, and as a Small Business by the State of California, Department of General Services, and found in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov), and whose principal place of business is located in one of the three counties of Alameda, Contra Costa, or San Francisco.
- **“Local Small Business”** or “LSB” means a firm that is certified as an SB by the State of California, Department of General Services, found in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov), and whose principal place of business is located in one of the three counties of Alameda, Contra Costa, or San Francisco.
- **“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.
- **“Principal Place of Business”** means the fixed office or location where the business conducts, on a regular basis, all the services for which Local SB verification is sought, other than work required to be performed at the Jobsite. None of the following constitute a principal place of business: a satellite or regional office, a post office box, a temporary location, a movable property, or a location that was established to oversee a project, such as a construction project office.
- **“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”** or **“SB”** means a firm certified as an SB by the State of California, Department of General Services and found in its database for SBs at [www.dgs.ca.gov](http://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 or Contractor.
- **“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, Subsuppliers, or Subconsultants, where applicable, commit in their Bid or Proposal to utilize SB First or Second Tier Subcontractors, Subsuppliers, or Subconsultants in order to meet the applicable SB goal, the Office of Civil Rights shall monitor the performance of the Contract or Agreement to confirm that the SB utilization

level included in the Bid or Proposal is met throughout the performance of the Contract or Agreement, including reviewing and, if acceptable, approving any request for substitution of listed SB Subcontractors, Subsuppliers, or Subconsultants, and reviewing and approving change orders, where appropriate. The Office of Civil Rights shall monitor potential fraudulent behavior on the part of a Contractor, Supplier, Consultant, Subcontractor, Subsupplier, Subconsultant or individual to ensure, among other things, that ineligible firms do not qualify as an SB, are not granted a preference, or are offered as a substitute SB for a listed SB during the performance of the Contract or Agreement.

5. QUALIFICATION AS AN SB, LSB, DVBE, AND LGBTBE

- (a) 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 certified as an SB and be listed in the State of California, Department of General Services (“DGS”) database for SBs, at [www.dgs.ca.gov](http://www.dgs.ca.gov) prior to the submission of the Bid or Proposal.
- (b) A firm seeking to be recognized as a Local Small Business (LSB) as a Bidder, Proposer, or as an LSB Subcontractor, Subsupplier, or Subconsultant, shall be a certified SB in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov) prior to the submission of the Bid or Proposal and shall have its principal place of business in Alameda, Contra Costa, or San Francisco counties, as verified by BART staff prior to Award. (See Appendix A – Verification of LSB Firms.)
- (c) A firm seeking to be recognized as a DVBE Bidder, Proposer, or as a DVBE Subcontractor, Subsupplier, or Subconsultant shall be certified as an SB and as a DVBE by the State of California DGS, and be listed in the DGS database for SBs, at [www.dgs.ca.gov](http://www.dgs.ca.gov), prior to the submission of the Bid or Proposal.

- (d) A firm seeking to be recognized as an LGBTBE Bidder, Proposer, or as an LGBTBE Subcontractor, Subsupplier, or Subconsultant shall be certified by one of the BART-recognized certifying bodies listed in Appendix B, be certified as an SB by the State of California DGS, and be listed in the DGS database for SBs, at [www.dgs.ca.gov](http://www.dgs.ca.gov), prior to the submission of the Bid or Proposal.
- (e) Independence and Affiliation: SBs, including LSBs, shall be independent businesses and shall not be dependent upon other firms for resources, management, or other aspects of their businesses. The District may take into consideration the affiliation of other businesses that may or may not be SBs or LSBs. The District, in considering affiliation, will consider identities of interest; the sharing of facilities, employees, ownership, or equipment; contractual relationships between the businesses; or other similar factors.
- (f) Commercially Useful Function: In order to be counted as an SB or LSB, SBs and LSBs shall perform a commercially useful function. An SB or LSB performs a commercially useful function when it does all of the following:
- 1) Is responsible for the execution of a distinct element of the work of the Contract or Agreement.
  - 2) Carries out its obligation by actually performing, managing, or supervising the work involved.
  - 3) Performs work that is normal for its business services and functions.
  - 4) Is responsible, with respect to products, inventories, materials, and supplies required for the Contract or Agreement, for negotiating price, determining quality and quantity, ordering, installing material or equipment (where applicable) and making payment for the products, inventories, materials, or supplies.
  - 5) Is not further subcontracting a portion of the work that is greater than expected to be subcontracted by normal industry practices.

An SB or LSB shall not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or Agreement through which funds are passed in order to obtain the appearance of an SB performing the work.

#### 6. SB PROGRAM ANNUAL LIMIT

An annual limit of \$3,000,000 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 SB Program will apply and if so, any applicable limits to the total dollar preference.

#### 7. PRIME CONTRACTS AND AGREEMENTS ELIGIBLE FOR SB PREFERENCE

- (a) BART may, at its sole discretion, designate specific Prime Contracts or Agreements with a maximum value of \$10,000,000, as eligible for an SB Bidder or Proposer preference (including LSBs, DVBEs, Local DVBEs, LGBTBEs, and Local LGBTBEs) of up to 7% of the lowest responsible Bidder's or Proposer's Bid or Proposal price, with the exact percentage applicable to a particular Contract or Agreement determined by BART. The maximum Bid preference is \$150,000. Any SB Prime Preference Contract or Agreement shall have a minimum self-performance percentage to be set by BART prior to advertisement of the solicitation, which is applicable to any awarded SB Prime Bidder or Proposer.
- (b) SB Prime 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. The amount of the preference will be based on the following:

- 1) If the Contract or Agreement is projected to be for less than \$5 million, and the funding for the Contract or Agreement does *not* include Measure RR money, the SB preference will be 5% of the lowest responsible Bid up to \$150,000, for SBs, DVBES, and LGBTBES.
- 2) If the Contract or Agreement is projected to be for less than \$5 million and the funding for the Contract or Agreement *does* include Measure RR money, the SB preference will be 7% of the lowest responsible Bid up to \$150,000, for LSBs, Local DVBES, and Local LGBTBES.

(c) For Contracts or Agreements that are at least \$5 million and less than \$10 million, BART will decide if the Contract or Agreement will have an SB prime preference or a preference based on meeting the SB Subcontractor Participation Goal, but not both. The amount of the preference for Contracts and Agreements with an SB prime preference will be based on the following:

- 1) If the Contract or Agreement has a value of between \$5 million and \$10 million and the funding for the Contract or Agreement does *not* include Measure RR money, the SB preference will be 5% of the lowest responsible Bid for SBs, DVBES, and LGBTBES, with the maximum dollar amount of \$150,000.
- 2) If the Contract or Agreement has a value of between \$5 million and \$10 million and the funding for the Contract or Agreement *does* include Measure RR money, the SB preference will be 7% of the lowest responsible Bid for LSBs, Local DVBES, and Local

LGBTBEs, with a maximum dollar amount of \$150,000.

## 8. CONTRACT-SPECIFIC SB SUBCONTRACTOR PARTICIPATION GOALS

(a) BART, in its sole discretion, may establish, for a particular Construction or Procurement Contract or Services Agreement, with a value at or above \$5,000,000, an SB Subcontractor Participation Goal. For Contracts or Agreements that are at least \$5 million and less than \$10 million, BART staff will decide if the Contract or Agreement will have an SB prime preference or a preference based on meeting the SB Subcontractor Participation Goal, but not both. The SB Subcontractor Participation Goal shall be expressed as a percentage of the total Bid or Proposal price for a Contract or Agreement, less allowances and options. The Bidder or Proposer that meets the SB Subcontractor Participation Goal will be eligible for a preference of up to 7% of the lowest responsible Bidder's or Proposer's Bid or Proposal price up to \$150,000, only during evaluation for determining the award of the Contract or Agreement, based on the following funding:

- 1) If *not* funded by Measure RR, a preference of up to 5% for meeting the SB Subcontractor Participation Goal with SBs, DVBEs, and/or LGBTBEs. The dollar limit cap on the Subcontractor Participation Goal on Contracts not funded by Measure RR is \$150,000.
- 2) If funded in whole or in part by Measure RR, a preference of 7% for meeting the Local SB Subcontractor Participation Goal solely with LSBs, Local DVBEs, and/or Local LGBTBEs. The dollar limit cap on the Subcontractor Participation Goal on Measure RR-funded Contracts is \$150,000.

(b) In calculating whether the SB Subcontractor Participation Goal has been met, BART will count the value of subcontracts with SB or LSB Subcontractors, as follows:

- 1) For an SB or LSB Subcontractor, a prime Bidder or Proposer shall receive 100% credit of the SB or LSB Subcontract value towards the SB or LSB Subcontractor Participation Goal, with the exception that any work that an SB or LSB Subcontractor subcontracts to a non-SB or non-LSB, respectively, shall not be counted toward the SB or LSB Subcontractor Participation Goal;
- 2) For an SB or LSB Subsupplier, a prime Bidder or Proposer shall receive 60% credit of the value of the Subcontract towards an SB or LSB Subcontractor Participation Goal; and
- 3) For an SB or LSB Broker, a prime Bidder or Proposer shall receive 8% credit of the value of the Subcontract towards an SB or LSB Subcontractor Participation Goal.

(c) Regardless of the preference, the actual Contract or Agreement awarded will be for the original Bid or Proposal. Bidders that do not meet the SB or LSB Subcontractor Participation Goal are not eligible for the preference.

## 9. CONTRACT-SPECIFIC SB LOWER TIER SUBCONTRACTOR PARTICIPATION

BART, in its sole discretion, may recognize Lower Tier SB firms towards meeting the Contract SB Subcontractor Participation Goal on designated prime construction Contracts subject to subsections (a) through (c), below. On Measure RR funded Contracts, a Lower Tier LSB firm shall count towards meeting an LSB Subcontractor Participation Goal with LSB Subcontractors. The Prime Contractor shall include provisions in its First Tier Subcontracts providing for the following:

- (a) A provision requiring that the First or Lower Tier Subcontractor provide copies of the SB Lower Tier subcontracts to BART, and provide other documentation deemed needed by BART to confirm the SB participation.
- (b) A provision requiring that the Subcontractor at any tier provide BART with the information designated by BART which BART deems necessary for determining whether the SB Lower Tier Subcontractor is performing work on the Contract, including reports on payments made to SB Lower Tier Subcontractors.
- (c) A provision requiring the First or Lower Tier Subcontractor to replace an SB Lower Tier Subcontractor with another SB firm if a substitution is deemed necessary.

#### 10. SB SUBCONTRACTOR PARTICIPATION GOALS IN DESIGN-BUILD CONTRACTS

For Design-Build Contracts issued pursuant to Public Contract Code Section 22160, BART may establish three SB Subcontractor Participation Goals for services, procurements, and construction, respectively.

The Proposers for the Design-Build Contracts may be required to meet the SB Subcontractor Participation Goal for services and commit to meeting the SB Subcontractor Participation Goals for procurement and construction in order to be eligible for a preference of up to 7% up to \$150,000, which will be credited in the price portion of the Proposal, subject to following the provisions of Section 8. BART staff will monitor the Contractor's performance of the Contract following award to ensure that the Contractor meets the SB Subcontractor 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 Subcontractor Participation Goal, the Contractor shall take all reasonable steps to ensure that its SB Subcontractors, Subsuppliers, or Subconsultants are able to successfully perform their subcontract responsibilities.

## 12. SUBSTITUTION OF SBs

Substitution of any certified SB or LSB shall be only for good cause and subject to verification with the subject SB or LSB firm being substituted. Good cause includes, but is not limited to:

(a) When the listed SB or LSB subcontractor, Subsupplier, or Subconsultant, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the SB or LSB subcontractor, Subsupplier or Subconsultant's bid or proposal and at the price specified in the SB or LSB subcontractor, Subsupplier or Subconsultant's bid or proposal, when that written contract, based upon the general terms, conditions, plans, and specifications for the District Contract or Agreement involved or the terms of that SB or LSB Subcontractor, Subsupplier or Subconsultant's written bid or proposal, is presented to the SB or LSB Subcontractor, Subsupplier or Subconsultant's by the prime Contractor, Supplier, or Consultant.

(2) When the listed SB or LSB subcontractor, Subsupplier or Subconsultant becomes insolvent or the subject of an order for relief in bankruptcy.

(3) When the listed SB or LSB subcontractor, Subsupplier, or Subconsultant fails or refuses to perform its subcontract.

(4) When the listed SB or LSB Subcontractor, Subsupplier, or Subconsultant fails or refuses

to meet the bond requirements of the prime Contractor, Supplier, or Consultant as set forth in CA PCC [Section 4108](#) .

(5) When the prime Contractor, Supplier, or Consultant demonstrates to BART, that the name of the SB or LSB Subcontractor, Subsupplier, or Subconsultant was listed as the result of an inadvertent clerical error.

(6) When the listed SB or LSB Subcontractor, Subsupplier, or Subconsultant is not licensed pursuant to the California Contractors License Law.

(7) When BART determines that the work performed by the listed SB or LSB Subcontractor, Subsupplier, or Subconsultant is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the SB or LSB Subcontractor, Subsupplier or Subconsultant is substantially delaying or disrupting the progress of the work.

(8) When the listed SB or LSB subcontractor, Subsupplier, or Subconsultant is ineligible to work on a public works project pursuant to [Section 1777.1](#) or [1777.7 of the Labor Code](#) .

(9) When BART determines that a listed SB or LSB Subcontractor, Subsupplier, or Subconsultant is not a responsible Contractor, Supplier, or Subconsultant.

In any event, any SB or LSB qualified under the SB Program shall be entitled to a process for approving such substitutions consistent with the terms of the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.).

Should the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, establish that the substitution of any SB or LSB Subcontractor, Subsupplier, Subconsultant or, where applicable, Lower Tier SB or LSB Subcontractor, Subsupplier, or Subconsultant, is necessary, the Contractor, Supplier, Consultant or Other Tier Subcontractor, Subsupplier, or Subconsultant, shall, subject to the approval of BART, replace the affected SB or LSB Subcontractor, Subsupplier, or Subconsultant with another SB or LSB as applicable. In the

event that the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, is unable to replace the affected SB or LSB Subcontractor, Subsupplier, or Subconsultant with another SB or LSB, as applicable, due to the unavailability of SBs or LSBs, as applicable, the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, shall request approval from OCR of substitution of the affected SB or LSB Subcontractor, Subsupplier, or Subconsultant with a non-SB or non-LSB, as applicable. OCR shall either deny such request if it is determined that SBs or LSBs, as applicable, are in fact available or require the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, to demonstrate that it made good faith efforts to replace the affected SB or LSB Subcontractor, Subsupplier, or Subconsultant with another SB or LSB as applicable 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 Other Tier Subcontractor, where applicable, on the actions listed below. These steps are reflective of good faith efforts taken by a Contractor, Supplier, Consultant, or Other Tier Subcontractor seeking to replace an SB or LSB with another SB or LSB in order to maintain its commitment to meet the SB Subcontractor Participation Goal.
- ***Identify and select*** specific subcontracting areas of the Contract or Agreement to be performed by SB or LSB 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, including local media as appropriate, likely to be available to SBs, DVBEs, and LGBTBEs. The required advertising shall be completed sufficiently in advance of the selection decision to allow potential SB or LSB 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 or LSB Subcontractors, Subsuppliers, or Subconsultants with enough time

prior to the selection decision to allow the SBs or LSBs to offer a proposal.

- ***Follow up*** initial solicitations to SB or LSB Subcontractors, Subsuppliers, or Subconsultants to confirm whether the potential SB or LSB Subcontractors are interested in performing the Subcontracts.
- ***Provide*** interested SB or LSB 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 or LSB 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 or LSBs.
- ***Negotiate*** in good faith with SB or LSB Subcontractors, Subsuppliers, or Subconsultants who express an interest in subcontracting, as appropriate.
- ***SB or LSB Availability***. If SBs or LSBs, where applicable, are deemed to be available then the Contractor, Supplier, Consultant or Other Tier Subcontractor, where applicable, shall not be deemed to have demonstrated sufficient good faith efforts and such substitution request shall be denied.

### 13. SB PARTICIPATION REPORTS

Contractors, Suppliers, and Consultants shall submit on a form provided by BART a monthly SB or LSB Subcontractor Utilization Report to the Office of Civil Rights (OCR) showing the total amount paid to date to each listed SB or LSB. Prime Contractors, Suppliers, or Consultants must submit all reports requested by OCR related to the participation of Subcontractors, Subsuppliers, or Subconsultants on BART Contracts or Agreements.



#### 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 First-Tier Subcontractors, conform with the SB participation requirements.

APPENDICES MAY BE SUBJECT TO REVISION, SUBSTITUTION, DELETION OR ADDITION BY THE OFFICE OF CIVIL RIGHTS CONSISTENT WITH THE TERMS OF THE PROGRAM WITHOUT REQUIRING BOARD APPROVAL OF THE REVISION OR CHANGES TO THE PROGRAM.

## APPENDIX A: VERIFICATION OF THE LOCAL STATUS OF SMALL BUSINESSES

Verification is the process by which all firms seeking to participate as Local Small Businesses (LSBs) are determined to have met the eligibility requirements to participate as LSBs on Measure RR funded Contracts or Agreements, including Local DVBES and Local LGBTBEs. This Appendix provides guidance for verifying firms as LSBs.

### 1. Declaration of Eligibility for Local Small Business Preference

DGS certified Small Businesses bidding on a BART Contract or Agreements must declare their Small Business eligibility including DGS certification number in the Declaration of Eligibility for Local Small Business Preference. On Measure RR funded Contracts or Agreements, the Declaration of Eligibility for Local Small Business Preference will also include a Local status declaration, including the address of the principal place of business.

### 2. Verifying information on the California Department of General Services Website

Upon receiving a Declaration of Eligibility for Local Small Business Preference or Local Verification Request form, OCR will verify whether the address and city listed on the DGS Small Business database is located within the three Measure RR counties: Alameda, Contra Costa, or San Francisco. If not, the request is denied and the firm is not considered to be Local for BART. The firm may re-request verification of local status if its address has changed on the DGS website to one of the Measure RR counties.

### 3. Verifying Local Status of a Small Business within Alameda, Contra Costa, or San Francisco Counties

a) After verifying the location listed on the DGS website, OCR will check to see if the SB is already certified as local by one of the following agencies:

- Alameda County (Small and Local Business or Emerging and Local Business)
- City/County of San Francisco (Local Business Enterprise)
- City of Oakland (Local Business Enterprise)

If the SB is certified as local by one of the above agencies, the SB shall be considered a verified Local SB by BART.

b) For firms not certified as local by a neighboring county or city, BART will request that the Small Business owner(s) provide documentation to demonstrate that the business qualifies as Local:

- A copy of the firm's business license in the city where the business is based (or county if in an unincorporated area);
- A copy of a real estate property tax assessment or lease in the name of the firm or owner;
- A copy of the firm's (or owner's, if applicable) most recent federal tax return

c) These documents must be provided and examined prior to the award of the Contract or Agreement in order to be granted the Local Small Business preference. If any of the documents show an address other than the one in the DGS database, it is grounds for rejection of local status, although the business owner may be given an opportunity to explain the discrepancy.

d) In some cases, a range of factors may be considered to determine the firm's principal place of business. These factors include:

- Location where the firm’s owner(s) and Chief Executive Officer (CEO) work on a regular basis;
  - Where the headquarters facility is located, which may be indicated by signage, reception, and administrative and project records;
  - Where employees, in quality and quantity, report regularly to work;
  - Where the firm’s primary operations take place;
  - Where resources such as major equipment or supplies are kept,
  - The address listed for the firm on any other certification, including Disadvantaged Business Enterprise (CUCP), Micro/Small Business Entity (BART), Minority and Women Business Enterprise (BART), and Local Business Enterprise (Contra Costa County); and
  - Analysis of Google map images – or similar – of the address listed as the principal place of business.
- e) The District expects all SBs seeking Local status to cooperate fully with requests for information relevant to the verification process and other requests for information. Failure or refusal to provide such information is cause for denial or removal of status as a Local SB to BART.

4. Declaration of Eligibility for Local Small Business Subcontractors

On Contracts or Agreements with a SB Preference for Bidders meeting a Local SB Subcontractor Participation Goal, any Bidder wishing to meet the SB Goal must list Local SB Subcontractors on the Designation of Subcontractors, M/WBE, and SB Participation Form. After the Bids are submitted, OCR will confirm that the address listed in the DGS database for each designated Local SB Subcontractor is Local and will ask any Bidder

appearing to meet to Local SB Subcontractor Participation Goal to gather and submit Local status documentation for each of the listed Local SB Subcontractors including a Local Verification Request form and the three items listed in Paragraph #3, above. OCR will evaluate the documentation to verify Local status of each SB Subcontractor.

5. Already Verified Local SBs

Once an SB has been verified as Local, the firm will be added to a database maintained by BART. A Small Business Bidder previously verified as Local by BART will still need to submit a Declaration of Eligibility for Local Small Business Preference as part of its Bid. But its Local status does not need to be verified as described in Paragraph #3, above.

6. Requesting Verification of Local Status Outside of the Bid Process

A DGS certified Small Business may request that OCR verify its Local status outside of any Contract Bid process. This can be done by completing a Local Verification Request form available on the OCR website. OCR staff will follow the steps in Paragraphs #2 and #3, above, to verify the Local status of the SB.

7. List of Verified Local SB Firms

OCR will provide notification to the firm that it has been verified as Local and will add it to the list of verified LSB, Local DVBE, and Local LGBTBE firms. This list is a supplement to the DGS list of certified SBs and potential LSBs but is not meant to replace it for outreach purposes. The list of currently verified LSBs will be made available on the BART website. If an SB, DVBE, or LGBTBE is removed from the DGS website, they are regarded as removed from BART's LSB list as well.

- OCR will use the industry codes – North American Industry Classification System (NAICS) – listed on the DGS website for the firm and add them to the list of verified

LSBs. The assignment of a NAICS code is only for informational purposes to assist potential Bidders in identifying LSBs capable of performing work to be subcontracted.

8. Possible Site Visits

From time to time the District may request additional information or conduct site visits to ensure that an SB verified as Local remains eligible for Local status. Failure to timely cooperate or comply with a request for a site visit is a ground for denial or removal of status as an LSB.

9. Renewal of Local Status

Each year on or near the anniversary of the SB's verification as Local, OCR will ask the Local Small Business to complete a Declaration of No Change in Address, in order to keep its Local Small Business status current. If an SB has changed address but still remains within Alameda, Contra Costa, or San Francisco Counties, it must submit a lease, utility bill, or property tax assessment as verification of its new address as Local. If a Local SB moves outside of Alameda, Contra Costa, and San Francisco Counties it loses its Local status with BART. Every three years in order to renew its Local status, all verified Local SBs must re-submit the documentation listed in Paragraph #3, above.

APPENDIX B: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBTBE)  
CERTIFICATION

The Bidder or Proposer is responsible for indicating the LGBTBE certification status, whether of an SB or LSB Prime seeking a Prime Preference based on LGBTBE status, or of a LGBTBE Subcontractor.

1. BART accepts the LGBTBE certification of the following organizations:
  - a) National Gay and Lesbian Chamber of Commerce (NGLCC). The NGLCC, a national organization based in Washington, D.C.;
  - b) California Public Utilities Commission (CPUC), through its Supplier Clearinghouse. OCR will provide information on the District's website regarding the CPUC's searchable database of certified LGBTBE firms.
2. Any LBGTBE certified firm must also be certified as a Small Business by the State of California, Department of General Services, and listed in the DGS database for SBs at [www.dgs.ca.gov](http://www.dgs.ca.gov).
3. In order to be eligible for the SB Prime Preference or the SB Subcontractor Participation Preference, the LGBTBE shall be certified by one of the above certifying bodies listed in Paragraph #1, above, and as an SB by the DGS at the time of the Bid.
4. BART will list verified Local LGBTBEs on its website along with other verified LSBs.



### LOCAL VERIFICATION REQUEST FORM

San Francisco Bay Area Rapid Transit District (BART) Local Small Business  
for Small Businesses (SB) certified by the California Department of General Services (DGS)

Name of Business \_\_\_\_\_

Principal Place of Business (address) \_\_\_\_\_

City, State, Zip \_\_\_\_\_ County \_\_\_\_\_

DGS Small Business Cert. ID: \_\_\_\_\_

Check all that apply:  SB  Disabled Veteran Business Enterprise  LGBT Business Enterprise

Owner or Owner’s representative \_\_\_\_\_ Title \_\_\_\_\_

Email \_\_\_\_\_ Phone \_\_\_\_\_

*Only DGS-certified SBs located in Alameda, Contra Costa, or San Francisco may be verified as Local SBs.*

BART’s list of Verified Local Small Businesses can be accessed at <https://www.bart.gov/about/business/ocr>.

#### CHECKLIST

If you answer ‘yes’ to any of the following, you do not need to provide any documentation with this request form:

- Certified as Small/Local Business or Emerging/Local Business by Alameda County and listed on: [https://www.acgov.org/sleb\\_query\\_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C](https://www.acgov.org/sleb_query_app/gsa/sleb/query/slebresultlist.jsp?smEmInd=C)
- Certified as San Francisco Local Business Enterprise by City/County of San Francisco and listed on: [http://mission.sfgov.org/hrc\\_certification/](http://mission.sfgov.org/hrc_certification/)
- Certified as Local Business Enterprise by City of Oakland and listed on: <http://www2.oaklandnet.com/government/o/CityAdministration/d/CP/s/CertifiedContractors/index.htm>

If you did not answer ‘yes’ to any of the above criteria, please provide the following documentation with your Local Verification Request Form:

- A copy of your business license from the city where your business (SB) is based (should match above). May be from a county if your business is based in unincorporated area.
- If you own the property above, please provide a copy of the most recent real estate property tax assessment. If you rent or lease the property above, please provide a copy of the lease agreement (summary page is sufficient) under the name of the SB or the SB’s owner.
- A copy of SB’s or owner’s (if applicable) most recent 1040 federal tax return (i.e. Schedule C).

Preferred method of delivery is scanned PDF copies of this form and documentation (if required), emailed to [measurerr@bart.gov](mailto:measurerr@bart.gov). The form and documentation may also be sent to:

BART Office of Civil Rights  
Local Small Business Verification  
300 Lakeside Dr, 16<sup>th</sup> Floor  
Oakland, CA 94612

Questions?  
Call: 510-287-4700  
Email: [measurerr@bart.gov](mailto:measurerr@bart.gov)