

Disadvantaged Business Enterprise (DBE) PROGRAM

Adopted: 7/12/2010

Revised: 1/8/2020

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POLICY STATEMENT

Objectives/Policy Statement (§26.1, §26.23):

MONTEREY-SALINAS TRANSIT (MST) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MST has received Federal financial assistance from the Department of Transportation and, as a condition of receiving this assistance, MST has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MST to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also MST's policy to:

1. Ensure non-discrimination 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 the DBE Program is narrowly tailored in accordance with applicable law, including the Ninth Circuit Ruling in *Western States vs. Washington State DOT*;
4. Ensure that only firms fully meeting the eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs;
5. Identify and help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. Assist with the development of firms that can compete successfully in the marketplace outside of the DBE Program.

The General Manager/CEO has designated the Compliance Analyst as the DBE Liaison Officer (DBELO). In that capacity, the DBELO 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 MST in its financial assistance agreements with the Department of Transportation.

MST has disseminated this Policy Statement to its Board of Directors and all components of the organization. This Policy Statement has been distributed via direct mail to DBE and non-DBE business communities that perform work for MST on DOT-assisted contracts. MST's DBE Program is posted on its website.



Carl Sedoryk
General Manager/CEO

1/8/2020

Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the Policy Statement on the first page of this Disadvantaged Business Enterprise Program (Program).

Section 26.3 Applicability

MONTEREY-SALINAS TRANSIT is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178; Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; and Fixing America's Surface Transportation Act (FAST Act), Pub. L. No. 114-94, 129 Stat. 1312.

Section 26.5 Definitions

MONTEREY-SALINAS TRANSIT will adopt the definitions contained in 49 CFR §26.5 for this Disadvantaged Business Enterprise Program.

Section 26.7 Non-discrimination Requirements

MONTEREY-SALINAS TRANSIT 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.

In administering its DBE Program, MST will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing its accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: §26.11(a,b)

MONTEREY-SALINAS TRANSIT will report DBE participation to the relevant operating administration, FTA, on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments, or as required by 49 CFR Part 26. The reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: §26.11(c)

MONTEREY-SALINAS TRANSIT will develop and maintain a Bidders List (**Attachment A**) consisting of all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the Bidders List approach to calculating overall goals.

MST will collect this information through the use of California's Uniform Certification Program (CUCP) certification information and by requiring all prime contractors bidding on DOT-assisted contracts to submit, at the time of bid opening, the following information pertaining to the prime contractor and subcontractors who provided a bid or were contacted by the prime contractor:

1. The firm's name;
2. The firm's address;
3. The age of firm or years in business;
4. The firm's DBE or non-DBE status;
5. The type of work performed by the firm; and
6. The firm's annual gross receipts.

Section 26.13 Federal Financial Assistance Agreement

MONTEREY-SALINAS TRANSIT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: §26.13(a)

MONTEREY-SALINAS TRANSIT 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 MONTEREY-SALINAS TRANSIT 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.*).

The above language will appear verbatim in all DOT-assisted contracts and in all financial assistance agreements with subrecipients.

Contract Assurance: §26.13(b)

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, which may include, but is not limited to:

1. Withholding monthly progress payments; and/or
2. Assessing sanctions, liquidated damages; and/or
3. Disqualifying the contractor from future bidding as non-responsible.

MONTEREY-SALINAS TRANSIT will ensure that the above language appears verbatim in every DOT-assisted contract and subcontract.

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SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since MONTEREY-SALINAS TRANSIT has received a grant of \$250,000 or more in FTA planning capital and/or operating assistance in a Federal fiscal year, we will continue to carry out this Program until all funds from DOT financial assistance have been expended. MST will provide to DOT updates representing significant changes in the Program as they occur and will not implement such updates without prior approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this Program.

Section 26.25 DBE Liaison Officer

MONTEREY-SALINAS TRANSIT has designated the following individual as its DBE Liaison Officer:

Deanna Smith

Compliance Analyst/DBELO

Monterey-Salinas Transit

19 Upper Ragsdale Dr., Suite 200

Monterey, CA 93940

Phone: (831) 264-5878

Email: dsmith@mst.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that MST complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager/CEO concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment B** of this Program.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program in coordination with other appropriate officials. The DBELO has no (0) staff to assist in the administration of the Program, but works in collaboration with other MST staff members, including the Procurement Manager, Grants Analyst, and Accountant. Duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT;
2. Reviews third party contracts and purchase requisitions for compliance with this Program;
3. Works with all departments to set overall annual goals;
4. Works with the Procurement Manager to ensure that bid notices and requests for proposals are made available to DBEs in a timely manner;

5. Analyzes DBE participation and identifies ways to improve progress through race-neutral means;
6. Participates in pre-bid meetings;
7. Advises the General Manager/CEO and Board of Directors on DBE matters;
8. Provides DBEs with information and recommends sources to assist in preparing bids and obtaining bonding and insurance;
9. Plans and participates in DBE training seminars; and
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of MONTEREY-SALINAS TRANSIT to investigate services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

A list of financial institutions was obtained from 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). To date, the DBELO has identified the following minority-owned financial institutions, which offer services in California:

BORREGO SPRINGS Bank NA
EASTERN INTL Bank

COMMUNITY CMRC Bank
OMNI Bank NA

Section 26.29 Prompt Payment Mechanisms

MONTEREY-SALINAS TRANSIT will include the following clause(s) in each DOT-assisted prime contract:

Prompt Payment to Subcontractors §26.29(a)

The prime contractor agrees to pay to each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from receipt of each progress payment the prime contractor receives from MONTEREY-SALINAS TRANSIT. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause and with prior written approval from MONTEREY-SALINAS TRANSIT. This clause applies to both DBE and non-DBE subcontracts.

Prompt and Full Payment of Retainage to Subcontractors §26.29(b)(2)

No retainage will be held by MONTEREY-SALINAS TRANSIT from progress payments due the prime contractor.

Any retainage kept by the prime contractor must be paid in full to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of this retainage payment may take place only for good cause and with the agency's prior written approval.

Work Deemed Satisfactorily Completed §26.29(c)

A subcontractor's work shall be deemed satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by MONTEREY-SALINAS TRANSIT. When MONTEREY-SALINAS TRANSIT has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Prompt Payment Enforcement Mechanisms and Penalties §26.29(d)

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.

Section 26.31 DBE Directory

MONTEREY-SALINAS TRANSIT is not a certifying agency; therefore, per §26:81(g), MST references the California Department of Transportation DBE Directory (Directory) which identifies all firms eligible to participate as DBEs. The Directory lists the firms name, address, phone number, date of the most recent certification, and the type(s) of work the firm has been certified to perform as a DBE. Caltrans makes the directory available to the public electronically on the internet and in print. Caltrans updates the electronic version of the directory as soon as changes are made and revises the print version of the Directory at least once a year. The Directory can be found at <https://dot.ca.gov/programs/business-and-economic-opportunity/dbe-search>.

Section 26.33 Overconcentration

MONTEREY-SALINAS TRANSIT has not identified that overconcentration exists in the types of work that DBEs perform. If the DBELO determines that DBE participation is so overconcentrated in certain types of work or contracting opportunities that it unduly burdens the participation of

non-DBEs in that type of work, the DBELO will develop appropriate measures to address the overconcentration. The DBELO will seek approval of such measures from FTA and, at that time, the measures will become a part of this Program.

Section 26.35 Business Development Programs

MONTEREY-SALINAS TRANSIT has not established a Business Development Program. If MST implements such a program in the future, then MST will describe the rationale for having the program and the specific provisions of the program (e.g., who is eligible to participate, how the program works, and how interested persons can obtain information about the program). Upon deciding to implement a Business Development Program, the DBELO will seek approval of such program from FTA and, at that time, the program will become a part of the overall DBE Program.

Section 26.37 Monitoring and Enforcement Mechanisms

MONTEREY-SALINAS TRANSIT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. MST will bring to the attention of the Department of Transportation any false, fictitious, or fraudulent conduct, claim, statement, submission, or certification in connection with the program, so that DOT can take the steps to impose penalties under the Fraud Civil Remedies Act of 1986, as amended (31 U.S.C. 3801 *et seq.*) and implementing Department of Transportation Regulations set forth in 49 CFR Part 31.
2. MST will consider similar action under its own legal authorities, including responsibility determinations in future contracts, in accordance with regulations, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulations by a participant in our procurement activities.
3. MST will implement the following monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed. This process is detailed in **Attachment C** of this Program.
 - a. The DBELO shall monitor actual DBE participation by:
 - i. Certifying DBEs are performing work per contract terms;
 - ii. Reviewing contractor/subcontractor reports of payments; and
 - iii. Obtaining certification from DBEs of contractor payments.

Section 26.39 Fostering Small Business Participation

Under the definition of a small business concern this means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, 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), that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

To foster small business participation, MONTEREY-SALINAS TRANSIT shall take proactive steps to facilitate competition by small businesses.

MST's Small Business Element includes the following strategies:

1. Posting all procurement opportunities on MST's website.
2. Posting a statement on MST's website encouraging DBEs and small businesses to pursue our procurement opportunities.
3. Posting contact information on MST's website of small business associations, small business development centers, and other organizations that provide small business assistance.

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SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

MONTEREY-SALINAS TRANSIT does not use quotas or set-asides in any way in the administration of this Program.

Section 26.45 Overall Goals

A description of the methodology used to calculate the overall goal and the goal calculations can be found in **Attachment D** to this Program. This section of the Program will be updated triennially upon submission to FTA, or upon any required goal adjustment as described in §26.45(f)(1)(ii) and §26.47(c).

In accordance with Section 26.45(f)(1)(i), MONTEREY-SALINAS TRANSIT shall establish and submit its overall goals to DOT by August 1 preceding its assigned federal fiscal year triennial goal period.

Before establishing its overall triennial goal, MONTEREY-SALINAS TRANSIT shall consult with persons or groups to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MST's efforts to establish a level playing field for the participation of DBEs.

Following this consultive process, MONTEREY-SALINAS TRANSIT shall publish a notice announcing its overall goal before submission to FTA on August 1. Normally, MST will issue this notice by June 1 of each year. The notice shall be published on the MST website at www.mst.org and will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. If the proposed goal changes following review by FTA, the revised goal shall be posted on MST's website.

MONTEREY-SALINAS TRANSIT shall begin using its overall goal on October 1 of the calendar year following the August 1 submission to FTA, unless we have received other instructions from DOT. MST implements a race-neutral DBE Program and does not set contract goals.

Section 26.49 Transit Vehicle Manufacturers

MONTEREY-SALINAS TRANSIT shall require each Transit Vehicle Manufacturer (TVM), 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.

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

Section 26.51(a-c) Estimated Race-Neutral & Race-Conscious Participation

MONTEREY-SALINAS TRANSIT will meet its overall goal using race-neutral means of facilitating DBE participation. MST will use one or more of the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses.
2. Encouraging prime contractors to subcontract to DBEs portions of work that they might otherwise perform with their own forces.
3. Posting contact information on MST's website of small business associations, small business development centers, and other organizations that provide technical assistance to DBEs and small businesses.
4. Providing information in languages other than English, where appropriate.
5. Referring prime contractors to the California Department of Transportation DBE Directory which identifies all firms eligible to participate as DBEs.

Section 26.51(d-g) Contract Goals

MONTEREY-SALINAS TRANSIT will not use contract goals to meet any portion of its overall goal in accordance with its commitment to use race-neutral means of facilitating DBE participation.

MONTEREY-SALINAS TRANSIT will track race-neutral participation (per §26.51(f)). For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

1. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
2. DBE participation through a subcontract on a prime contract that does not carry a DBE goal; and
3. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts: §26.53(a) & (c)

MONTEREY-SALINAS TRANSIT will not use contract goals to meet any portion of its overall goal in accordance with its commitment to use race-neutral means of facilitating DBE participation.

To ensure MST's DBE Program is narrowly tailored in accordance with applicable law, including the Ninth Circuit Ruling in *Western States vs. Washington State DOT*, MST will state its own DBE goal and encourage prime contractors to use DBEs through the following contact clause:

MONTEREY-SALINAS TRANSIT has established a race-neutral goal of 1.5% for DBE participation in its DOT-assisted contracts. MONTEREY-SALINAS TRANSIT encourages its prime contractors to use DBE firms to the extent possible in all sub-contracting opportunities.

Section 26.55 Counting DBE Participation

MONTEREY-SALINAS TRANSIT will count DBE participation toward overall goals as provided in 49 CFR §26.55.

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SUBPART D – CERTIFICATION STANDARDS

Section 26.61-26.73 Certification Standards

MONTEREY-SALINAS TRANSIT is not a certifying agency; however, MST 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 certification eligibility standards.

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

Caltrans
Attn: Olivia Fonseca, Deputy Director
1823 14 Street
Sacramento, CA 95811
(916) 324-1700
Toll-Free (866) 810-6346
smallbusinessadvocate@dot.ca.gov

Certification application forms and documentation requirements are found at:
<http://www.dot.ca.gov/hq/bep/>

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SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

MONTEREY-SALINAS TRANSIT is a member of a Unified Certification Program (UCP) administered by the California Department of Transportation. The UCP will meet all of the requirements of this section. The following is a description of the UCP:

The California Unified Certification Program (CUCP) provides “one-stop shopping” certification to small, minority, and women businesses seeking participation in the United States Department of Transportation (USDOT) Disadvantaged Business Enterprise Program. Certification services are offered to businesses seeking to obtain either DBE or airport concessionaire disadvantaged business enterprise (ACDBE) status.

As mandated by USDOT in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR) Part 26, all public agencies that receive USDOT federal financial assistance must participate in a statewide unified certification program. These public agencies, commonly referred to as “recipients” of USDOT funds, include municipalities, counties, special districts, airports, transit agencies, and the State Department of Transportation (Caltrans).

The CUCP went into effect on January 1, 2002. It is a “one-stop shopping” certification program that eliminates the need for a DBE firm to obtain certifications from multiple agencies within the state. A business certified as a DBE through the CUCP is automatically accepted by all USDOT recipients in California.

The CUCP is charged with the responsibility of overseeing the certification activities performed by various certifying agencies and compiling and maintaining a single statewide database of certified DBEs. The database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the projects and services they can provide to all USDOT recipients in California.

The CUCP certifying agencies are responsible for certifying DBE firms. You only need to apply for DBE certification at one agency. If your firm meets the General Criteria for DBE certification as provided on the application package, submit your completed application along with the requested documentation to one of the certifying agencies serving the geographical area where your firm has its principal place of business.

Section 26.83(a) (c) Procedures for Certification Decisions

Any firm or complainant may appeal a Caltrans UCP’s decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE

West Building, 7th Floor
Washington, DC 20590-0001

MONTEREY-SALINAS TRANSIT will promptly implement any DOT certification appeal decision affecting the eligibility of DBEs for our DOT-assisted contracts. Those wishing to file an appeal must send a letter to DOT within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. DOT may accept an appeal filed later than 90 days after the date of the decision if DOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

Availability of Records §26.109(a)

MONTEREY-SALINAS TRANSIT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law as applicable in the State of California.

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

Confidentiality of Information on Complainants §26.109(b)

Notwithstanding the provisions of Section 26.109(a), 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 shall 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 hearing.

The statement below shall be included in all Requests for Proposals (RFPs):

The proposals received become the exclusive property of MONTEREY-SALINAS TRANSIT. At such time as a contract award is made by MST, all proposals submitted in response to this RFP shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each proposal which are trade secrets as the term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL," OR "PROPRIETARY." MONTEREY-SALINAS TRANSIT shall not in any way be liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Proposals that indiscriminately identify all or most of the proposal as exempt from disclosure without justification may be found technically unacceptable.

The statement below shall be included in all Invitation for Bids (IFBs):

The bids received become the exclusive property of MONTEREY-SALINAS TRANSIT. At such time MONTEREY-SALINAS TRANSIT publishes its board agenda containing a recommended action concerning a contract award, all bids submitted in response to this IFB shall become a matter of public record and shall be regarded as public records, with the exception of those elements of each bid which are trade secrets as that term is defined in California Government Code 6254.7 and which are so marked as "TRADE SECRET," "CONFIDENTIAL," or "PROPRIETARY." MONTEREY-SALINAS TRANSIT shall not in any way be

liable or responsible for the disclosure of any such records or portions thereof, including, without limitation, those so marked if disclosure is deemed required by law or by an order of a court. Bids that indiscriminately identify all or most of the bid as exempt from disclosure without justification may be found technically unacceptable.

Monitoring Payments to DBEs

MONTEREY-SALINAS TRANSIT will require prime contractors to maintain records and documents of payments to DBEs for (3) three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MONTEREY-SALINAS TRANSIT or DOT. This reporting requirement also extends to any certified DBE subcontractor.


MONTEREY-SALINAS TRANSIT 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.

LIST OF ATTACHMENTS

Attachment A	DBE Monitoring Forms
Attachment B	Organization Chart
Attachment C	Monitoring and Enforcement Mechanisms
Attachment D	Overall Goal and Goal Methodology

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A: DBE Monitoring Forms

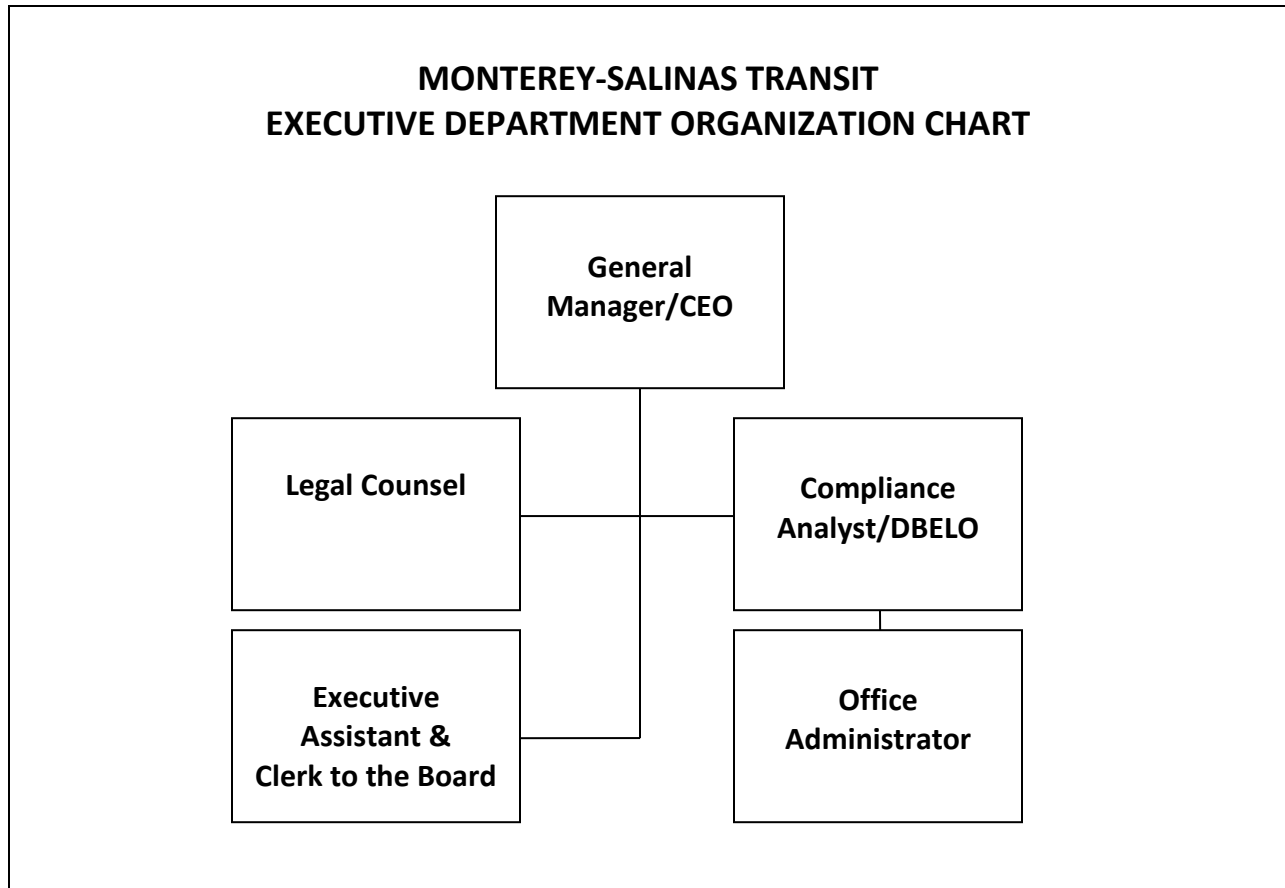
MONTEREY-SALINAS TRANSIT BIDDERS FORM		
<p>All bidders/proposers are required to provide the following information for all DBE and non-DBE firms:</p> <p>MST requires all prime contractors bidding on DOT-assisted contracts to submit, at the time of bid opening, the following information pertaining to the prime contractor and subcontractors who provided a bid or who were contacted by the prime contractor. Monterey-Salinas Transit will use this information to maintain and update a "Bidders List" to assist in MST's overall annual DBE goal-setting process as required by the Federal Transit Administration. To the extent permitted by law, all information submitted will be held in strict confidence.</p>		
Firm Name:		Firm Owner or Primary Contact:
Phone:	Fax:	Email:
Firm Address:		City: State: Zip:
<p>Is the firm currently certified as a DBE by the California Unified Certification Program?</p> <p>Yes or No (Circle one) NAICS Code:</p>		
<p>List the type(s) of work/services/materials provided by the firm:</p>		
<p>Firm's Gross Annual Receipts for the previous year:</p> <p><input type="checkbox"/> Less than \$1 million</p> <p><input type="checkbox"/> Less than \$5 million</p> <p><input type="checkbox"/> Less than \$10 million</p> <p><input type="checkbox"/> Less than \$15 million</p> <p><input type="checkbox"/> More than \$15 million</p>		<p>How many years has your firm been in business?</p>
<p><i>This form can be duplicated if necessary to report all bidders' (DBE and non-DBE) information. Please use a separate form for all bidders.</i></p>		
<p>Monterey-Salinas Transit Attn: DBE Liaison Officer 19 Upper Ragsdale Dr., Suite 200 Monterey, CA 93940</p>		

MST REPORT OF DBE PARTICIPATION	
Contractor:	Contract Start Date:
Contract Number:	Contract Completion:
Service(s) Provided by Contractor:	
Subcontractor (DBE) Business Name:	DBE Firm ID:
Subcontractor (DBE) Business Address:	
Primary Contact:	Phone #:
Service(s) Provided by DBE Subcontractor:	
WORKSITE OBSERVATION	
Worksite Location:	
Notes:	
Project Manager Signature:	Date:
Worksite Location:	
Notes:	
Project Manager Signature:	Date:
Worksite Location:	
Notes:	
Project Manager Signature:	Date:
Worksite Location:	
Notes:	
Project Manager Signature:	Date:

CONFIRMATION OF DBE PARTICIPATION	
THIS SECTION TO BE COMPLETED BY MONTEREY-SALINAS TRANSIT:	
Contractor:	Contract Start Date:
Contract Number:	Contract Completion:
Project Name or Service(s) Provided by Contractor:	
Subcontractor (DBE) Business Name:	DBE Firm ID:
Subcontractor (DBE) Business Address:	
Primary Contact:	Phone #:
Service(s) Provided by Subcontractor (DBE):	
THIS SECTION TO BE COMPLETED BY PRIME CONTRACTOR:	
I certify that the DBE Subcontractor listed above is performing the stated services on the project above, per contract agreement with Monterey-Salinas Transit, and that no other contractor, subcontractor, or other entity is performing this work.	
Contractor Signature:	Date:
THIS SECTION TO BE COMPLETED BY DBE SUBCONTRACTOR:	
I certify that my business, as listed above, is performing the stated services for the Prime Contractor, and that no other contractor, subcontractor, or other entity is performing this work.	
Subcontractor (DBE) Signature:	Date:
THIS SECTION TO BE COMPLETED BY MONTEREY-SALINAS TRANSIT:	
I certify that I spoke directly to the Subcontractor (DBE) and received confirmation that the business was performing all stated services for the Prime Contractor.	
DBELO Signature:	Date:

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B: MST ORGANIZATION CHART



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C: MONITORING AND ENFORCEMENT MECHANISMS

MONTEREY-SALINAS TRANSIT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

False or Fraudulent Statement and Claims

MST will bring to the attention of the Department of Transportation any false, fictitious, or fraudulent conduct, claim, statement, submission, or certification in connection with the program, so that DOT can take the steps to impose penalties under the Fraud Civil Remedies Act of 1986, as amended (31 U.S.C. 3801 *et seq.*) and implementing Department of Transportation Regulations set forth in 49 CFR Part 31.

MST will consider similar action under its own legal authorities, including responsibility determinations in future contracts, in accordance with regulations, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulations by a participant in our procurement activities.

Observation of Contractor and Subcontractor Work Sites

MST will implement the following monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed.

1. **On a semi-annual basis**, the DBELO (or other staff as assigned by the DBELO) will, if the firm provides architectural & engineering, consulting, legal, or other similar professional services; or if the firm is located out of state or out of MST's service area, consider the firm appropriately monitored by:
 - requiring the contractor and subcontractor to certify that DBEs are performing work as stated per contract, using MST's **Confirmation of DBE Participation Form**;
or
 - maintaining a record of meetings and/or emails with the contractor and subcontractor during which the work product is discussed; or
 - observing delivery of the work product or speaking directly with the DBE.
2. **On a quarterly basis**, the Project Manager (or DBELO) will, if the firm provides major construction work for MST:
 - visit the location at which the contractor or subcontractor of record is performing its job, and, using MST's **Report of DBE Participation Form**, document that DBEs are performing work as stated per contract.

Backup documentation for all worksite monitoring may include contractor/subcontractor signatures, DBELO visitation notes, email correspondence, photos, and/or meeting notes.

Running Tally of DBE Attainments

The DBELO will perform **semi-annual** reviews of prompt payment to subcontractors through the following mechanisms:

- MST shall require the prime contractor to submit invoices and cancelled checks for payments made to subcontractors in response to each progress payment received from MST.
 - The DBELO will review actual contractor payments to subcontractors by comparing the contractor's invoices and cancelled checks to the subcontractor with MST's progress payments to the prime contractor.
- MST shall require the prime contractor to submit invoices and cancelled checks for payments of retainage held by the prime contractor to subcontractors after work has been deemed satisfactorily completed.
 - The DBELO will review actual contractor payments of retainage held by the prime contractor to subcontractors by comparing invoices and cancelled checks to MST's incremental acceptance of each portion of the prime contract as stated in the schedule of DBE participation.
- Back-up documentation of this review will be included with MST's **Report of DBE Participation**.

Upon contract close-out review, the DBELO will review, finalize, and sign the **Report of DBE Participation**, including all back-up documentation. This report will be maintained in the DBELO's records and the Procurement file.

D: GOAL METHODOLOGY

Section 26.45 Overall Goal and Goal Methodology

The following is a description of the methodology used to calculate MONTEREY-SALINAS TRANSIT'S overall goal. MST's overall goal will be updated triennially upon submission to FTA, or upon any required goal adjustment as described in §26.45(f)(1)(ii) and §26.47(c).

In accordance with Section 26.45(f)(1)(i), MST shall establish overall goals by August 1 preceding its assigned Federal Fiscal Year triennial goal period.

Overall Goal Setting: (§26.45)

In accordance with Section 26.45(b), MONTEREY-SALINAS TRANSIT'S overall goal shall be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal shall reflect MST's determination of the level of DBE participation we would expect absent the effects of discrimination. MST will not simply rely on either the 10 percent national goal, MST's previous overall goal, or past DBE participation rates in our Program without reference to the relative availability of DBEs in our market.

MONTEREY-SALINAS TRANSIT will calculate its DBE goal using the Two-Step Process as specified in 49 CFR Part 26.45(c)(d).

Step 1 – Developing a Base Figure: (§26.45c)

MONTEREY-SALINAS TRANSIT will begin its goal setting process by determining a base figure for the relative availability of DBEs. MST will use one or more of the following approaches to develop this base figure:

1. MST may use its DBE Directory to determine the number of all ready, willing, and able businesses available in its market. Using the Census Bureau's County Business Pattern (CBP) database, MST will then determine the number of all ready, willing, and able businesses available in its market that perform work in these same NAICS codes.
2. MST may determine the number of DBEs that have bid or quoted (successfully or unsuccessfully) on its DOT-assisted prime contracts or subcontracts in the past three years. MST will determine the number of all businesses that have bid or quoted (successfully or unsuccessfully) on prime or subcontracts in the same period. MST will then divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in its market.
 - a. As required, MST will document within its goal submission the mechanism used to capture data on DBE and non-DBE prime and subcontractors that submitted bids when using this approach.
3. MST may use a percentage figure derived from data in a valid, applicable disparity study.

4. MST may use the goal of another DOT recipient, provided the DOT recipient is in the same or substantially similar market as MST, and provided the recipient has set its goal in compliance with this rule.

Step 2 – Adjusting the Base Figure: (§26.45d)

Once MONTEREY-SALINAS TRANSIT has calculated its base figure, it will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at its overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

The following evidence must be considered when adjusting the base figure:

1. The current capacity of DBEs to perform work in MST's DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
2. Evidence from disparity studies conducted anywhere within MST's jurisdiction, to the extent it is not already accounted for in its base figure;
3. If MST's base figure is the goal of another recipient, MST shall adjust for differences in its own local market and its contracting program.

If available, MST shall consider evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. These include, but are not limited to:

1. Statistical disparities in the ability of DBEs to get the financing, bonding, and insurance required to participate in MST's program;
2. Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent MST can relate it to the opportunities for DBEs to perform in its program.

Establishing the Overall Goal (§26.45e)

Once MONTEREY-SALINAS TRANSIT has determined a percentage figure using the two-step process, we will express our overall goal as a percentage of all FTA funds (exclusive of funds to be used for the purchase of transit vehicles) that MST will expend in FTA-assisted contracts in the forthcoming fiscal years.

In appropriate cases, the FTA Administrator may permit or require MST to express its overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

The Consultive Process: Section 26.45(g)(1,2)

Before establishing its overall triennial goal, MONTEREY-SALINAS TRANSIT shall consult (scheduled, direct, interactive exchange, i.e. face-to-face meeting or teleconference) with persons or groups (which may include but is not limited to, minority, women's, general contractors, trade associations, and community organizations) to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MST's efforts to establish a level playing field for the participation of DBEs. MST shall document in its goal submission the consultation process and shall not implement its proposed goal until completing this process.

Following this consultive process, MST shall publish a notice announcing its overall goal before submission to FTA on August 1. Normally, MST will issue this notice by June 1 of each year. The notice shall be published on the MONTEREY-SALINAS TRANSIT website at www.mst.org and will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. If the proposed goal changes following review by FTA, the revised goal shall be posted on MST's website.

MST's overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral participation); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during the consultive process and our responses; and proof of posting of the goal on MST's website.

MST will begin using its overall goal on October 1 of the calendar year following the August 1 submission to FTA, unless we have received other instructions from DOT. MST implements a race-neutral DBE Program; therefore, we do not set contract goals.

Goal Adjustments: (§26.45(f)(1)(ii))

MONTEREY-SALINAS TRANSIT may adjust its overall goal during the three-year period to which it applies in order to reflect changed circumstances. This adjustment, if made, will be submitted to FTA for review and approval.

Annual Goal Shortfall: §26.47(c)

If MONTEREY-SALINAS TRANSIT'S awards and commitments, as shown on its Uniform Report of Awards or Commitments and Payments at the end of any fiscal year, are less than the overall goal applicable to that fiscal year, MST shall:

1. Analyze in detail the reasons for the difference between the overall goal and MST's awards and commitments in that fiscal year (Section 26.47(c)(1));
2. Establish specific steps and milestones to correct the problems MST has identified in its analysis and enable MST to meet full our goal for the new fiscal year (Section 26.47(c)(2));

3. As a transit authority not meeting the criteria of Section 26.47(c)(3)(i), MST shall, as required, retain the analysis and corrective action in its records for three (3) years and make it available to FTA upon request (Section 26.47(c)(3)(ii)).



**DISADVANTAGED BUSINESS ENTERPRISE
OVERALL TRIENNIAL GOAL AND METHODOLOGY
Federal Fiscal Years 2021 – 2023**

INTRODUCTION

Monterey-Salinas Transit (MST) hereby submits its Disadvantaged Business Enterprise (DBE) Overall Triennial Goal and Methodology for federal fiscal year (FFY) 2021 through 2023.

MST was created by California law AB 644 and formed on July 1, 2010. The District succeeded the MST Joint Powers Agency (formed in 1981) when the City of Salinas joined the Monterey Peninsula Transit Joint Powers Agency (formed in 1972). Current members of the District include the cities of Carmel-by-the-Sea; Del Rey Oaks; Gonzales; Greenfield; King City; Marina; Monterey; Pacific Grove; Salinas; Sand City; Seaside; Soledad; and the County of Monterey. The MST Board of Directors appoints the District's General Manager/CEO.

MST is a public transit operator providing fixed-route, demand response, and special seasonal transit service to a 295-square mile area of Monterey County, Santa Cruz County, Santa Clara County, and San Luis Obispo County. From San Jose to Paso Robles, MST operates service that extends one-fifth the length of the entire State of California.

The overall DBE goal of 1.5% expressed herein represents anticipated DBE participation in Monterey-Salinas Transit's FTA-assisted activity for FFY 2021 through FFY 2023. This goal will be achieved 100% race neutrally.

BACKGROUND

As a recipient of Federal Transit Administration (FTA) funding, Monterey-Salinas Transit is required to submit an overall goal for DBE participation over the three upcoming federal fiscal years pursuant to Title 49 Code of Federal Regulations (CFR) Part 26.45 "Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation (US DOT) Programs." DBE regulations require US DOT recipients to set an overall goal based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on US DOT-assisted contracts. The goal must reflect MST's determination on the level of DBE participation expected absent the effects of discrimination. These regulations define the components that are addressed and incorporated in MST's DBE Program. MST's most recent DBE Program update was submitted to the Federal Transit Administration on January 13, 2020.

FTA-ASSISTED CONTRACTING FOR FFY 2021 - FFY 2023

Monterey-Salinas Transit receives FTA formula funding directly from FTA and indirectly from the California Department of Transportation (Caltrans) and other FTA transit grantees. These programs include 5307 Urbanized Area formula grants, including 5307 CARES Act; 5311 formula grants, including 5311, 5311f, and 5311f CARES Act; 5339 Bus and Bus Facilities formula and competitive grants; and Very Small Starts Capital Investment Grants. MST has signed an MOU with Caltrans allowing MST to report all federal funds directly to FTA semi-annually. MST does

not have FTA sub-recipients or pass-through FTA funds to other agencies; therefore, sub-recipient contracting opportunities do not exist and are not included in the goal calculation.

From the estimated \$55,180,416 in anticipated federal funding over this three-year DBE overall goal period, MST has isolated \$1,944,754 that provides contracting opportunities with potential for DBE participation and has developed a 1.5% DBE overall goal. A summary of MST's anticipated federal funds for this triennial goal period, as well as the expenses for which MST has programmed them is provided below:

MST has programmed a large portion of its total federal funds, including a portion of its federal 5307 and 5307 CARES Act funds for direct operating expenses (\$38,152,397) and bus purchases (\$6,044,484) which provide no contracting opportunities (salaries, fringes, rents, utilities, TVMs, etc.).

MST has programmed a portion of its federal 5307 and 5311 CARES Act funds to reimburse its contract transportation provider for direct operating expenses (\$8,040,000) which provides no contracting opportunities (salaries, fringes). The contractor's annual salaries are approximately \$4,387,274, which is more than MST's reimbursement with federal dollars; therefore, none of these funds are available for other contracting opportunities.

MST has programmed a portion of its federal 5307 funds for its Risk and Security Manager's salary and foot patrol services (\$468,000). Salaries/fringes are not used for goal setting, and the foot patrol contract is an ongoing contract that will not expire during this goal setting period.

\$530,781 in FEMA funds were awarded prior to this triennial goal period and were used to purchase protective driver barriers.

DBE regulations state that the overall goal should be expressed as a percentage of all FTA funds (minus exclusions) that MST will expend in FTA-assisted contracts over the next three federal fiscal years.

Monterey-Salinas Transit's federally funded contracting opportunities consist of projects for which MST has already been awarded funding and anticipated projects based on current and planned grant applications*. These projects include contracting opportunities for three (3) projects: preliminary and final design for SURF! BRT, COVID Recovery Planning, and the purchase of office furniture.

Table 1: FFY 21-FFY23 Projects and Federal Contract Dollars

Grant	Project	FFY 21	FFY 22	FFY 23	FFY 21-23
CIG/VSS	Surf! BRT	\$68,799	\$375,000	\$1,056,201	\$1,500,000
5307 CARES Act	COVID Recovery Planning	\$344,754	\$0	\$0	\$344,754
5339	King City Facility Furniture	\$100,000	\$0	\$0	\$100,000
TOTAL \$		\$513,553	\$375,000	\$1,056,201	\$1,944,754

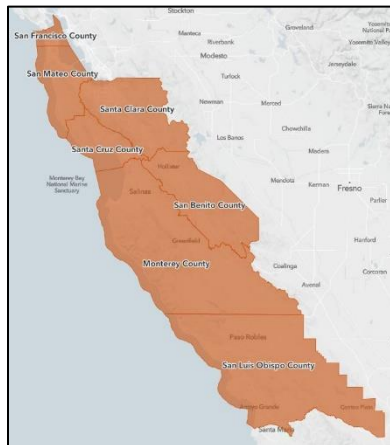
GOAL METHODOLOGY

Establishment of Local Market Area

The US DOT *Tips for Goal Setting* recommends explaining how the local market area was determined. The local market area is the location wherein the substantial majority of contractors and subcontractors MST does business with reside, and the area wherein MST spends the substantial majority of its contracting dollars.

After reviewing where the majority of DBE and non-DBE contractors and subcontractors who have bid on previous contracting opportunities reside and the areas in which MST has spent the majority of its federal contracting dollars, the local market area was determined to be the counties of Monterey, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Clara, and Santa Cruz located within Caltrans Districts 4 and 5. **Figure A** presents an illustration the seven (7) counties in MST's local market area.

Figure A: MST's Local Market Area



The two-step goal setting process required by 49 CFR 26.45 was used to determine the recommended overall goal for FFY 2021 – FFY 2023. This two-step process includes:

1. Establishing a base figure for the relative availability of DBEs;
2. Determining the base figure adjustment, if necessary.

This section outlines the process Monterey-Salinas Transit used to establish the Step 1 base figure and any consideration given to determine if a two-step adjustment of the base figure is warranted.

Step 1: Determining a Base Figure

Monterey-Salinas Transit examined sources identified in the US DOT *Tips for Goal Setting* to measure the relative availability data. MST determined the California Department of Transportation (Caltrans) database of all statewide, certified DBE suppliers, the California Uniform Certification Program (CUCP), and the latest (2018) US Census Bureau County Business Patterns database (CBP) were the most appropriate sources available to estimate the relative availability of DBEs and non-DBEs in its market area. Weighting of project activity with the applicable North American Industry Classification System (NAICS) code is encouraged by US DOT to ensure the base figure is as accurate as possible.

MST programmed three contracting opportunities for FFY 2021: one for COVID recovery planning consulting (\$344,754), one for the purchase of office furniture (\$100,000), and one for preliminary design of the SURF! BRT project (\$68,799).

MST programmed \$375,000 for the second phase of preliminary design on its SURF! BRT project during FFY 2022.

MST programmed \$1,056,201 to complete the final design of the SURF! BRT project. An examination of MST's past participation for similar contracting opportunities revealed that no DBEs submitted proposals as prime contractors for projects of this size, but past primes have subcontracted with DBEs to perform portions of the work product. **Table 2** displays NAICS codes and project work type, weighted as a percentage of allocated funds.

Table 2: Contracting Opportunities by NAICS Code and Projects Weights

NAICS Code	Project/Work Type	Amount of DOT funds on project:	% of total DOT funds (weight)
541611	General Management Consulting	\$344,754	0.18
541370	Surveying and Mapping	\$133,799	0.07
541380	Geotechnical Engineering	\$255,201	0.13
541620	Environmental Consulting	\$128,000	0.07
442140	Office Furniture	\$100,000	0.05
541310	Architectural Design	\$482,750	0.25
541330	Traffic Engineering	\$375,250	0.19
339950	Wayfinding Signage	\$125,000	0.06
Total FTA-Assisted Contract Funds		\$1,944,754	1.00

MST did not use past participation to establish its base figure. Six-digit NAICS codes were used consistently in both the numerator and denominator for each type of contracting opportunity. MST examined the relationship between the relative availability of DBEs and non-DBEs according to the type of work performed by each potential contractor as categorized by NAICS codes within the seven (7) counties identified as MST's local market area. MST refined the data to ensure that all firms were licensed to conduct work in the state of California, had not been suspended, and were able to perform the type of work required. **Table 3** displays the relative availability of DBEs by NAICS codes.

Table 3: Relative Availability (DBEs) / (All Firms) = Relative Availability

NAICS Code	Work Type	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
541611	General Management Consulting	12	1352	0.01
541370	Surveying and Mapping	8	627	0.01
541380	Geotechnical Engineering	12	1566	0.01
541620	Environmental Consulting	12	283	0.04
442110	Office Furniture	0	326	0.00

541310	Architectural Design	8	722	0.01
541330	Traffic Engineering	12	1566	0.01
339950	Wayfinding Signage	4	63	0.06
Combined Totals		68	6505	0.01

The Step 1 weighted base figure is derived by multiplying the category weight by the relative availability as shown in the equation below:

$$\text{Base Figure} = \sum \frac{(\text{Number of DBEs Ready, Willing, and Able})}{(\text{Number of All Firms Ready, Willing, and Able})} \times \text{weight} \times 100$$

Table 4: Step 1 – Weighted Base Figure

NAICS Code	Project	Weight	Availability	Weighted Base Figure
541611	General Management Consulting	0.1773	0.0089	0.0016
541370	Surveying and Mapping	0.0688	0.0128	0.0009
541380	Geotechnical Engineering	0.1312	0.0077	0.0010
541620	Environmental Consulting	0.0658	0.0424	0.0028
442110	Office Furniture	0.0514	0.0000	0.0000
541310	Architectural Design	0.2482	0.0111	0.0028
541330	Traffic Engineering	0.1930	0.0077	0.0015
339950	Wayfinding Signage	0.0643	0.0635	0.0041
			Total	0.0146
			Expressed as a % (*100)	1.46%
			Rounded, Weighted Base Figure:	1.5%

Step 2: Adjusting the Base Figure

Once the base figure was calculated, MST examined all the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment should be made. Several factors must be considered when making the Step 2 adjustment to the base figure. MST considered the following factors to determine the need for a Step 2 adjustment:

1. Past participation (the volume of work DBEs have performed in recent years) or other measures of demonstrated capacity; and
2. Evidence from disparity studies conducted in the market area (including relevant studies commissioned by other contracting agencies in the market area).

Past Participation

Given that MST programs most of its federal funds for revenue service vehicles, salaries, fringes, and other overhead expenses, the number of federal contracting opportunities per FFY are minimal, and the types of work performed by NAICS codes are similar to previous years.

Upon establishing the base figure, staff reviewed past DBE goal attainment, the possible use of Caltrans 2019 Disparity Study, and considered if there may be other evidence or information that would have an impact on whether to adjust MST's DBE goal.

Evidence from Disparity Studies

Monterey-Salinas Transit analyzed the 2019 Caltrans FTA Disparity Study to determine whether it would be applicable to its local market area. The study found that many minority and woman-owned businesses are small businesses that often work as subcontractors¹ (28.7%) rather than prime contractors (1.7%). This comports with past participation in MST's contracting opportunities, the majority of which are transit-related planning, consulting, and architecture/engineering opportunities for which most DBE participation is subcontracted out by prime contractors.

The study also found that minority and woman-owned businesses participated at a higher rate for professional services contracts (22.4%) than goods and services contracts (4.3%)². For this reporting period, MST's contracting opportunities are programmed primarily for professional services; planning consultants (11%), and architecture & engineering (84%), for which prime contractors may subcontract out portions of the work to DBEs. One of MST's contracting opportunities has already been awarded to a non-DBE prime contractor (architecture & engineering) in the amount of \$68,799; therefore, the potential for DBE participation is small for this contract given its size.

Although this study covered the entire State of California, given Monterey-Salinas Transit's contracting opportunities and past participation in similar types of work, MST concluded that its findings could be relevant to its current DBE goal-setting effort.

Statistical Disparities Relating to Financing, Bonding, and Insurance

The 2019 Caltrans Disparity Study revealed that marketplace conditions indicate that minorities, women, and minority- and woman-owned businesses face substantial barriers obtaining necessary financing, bonding, and insurance nationwide and in California³.

A May 2020 article by McKinsey & Company⁴ reported that the COVID-19 crisis "could

¹ 2019 Caltrans FTA Disparity Study, page 9

² 2019 Caltrans FTA Disparity Study, page 13

³ 2019 Caltrans Disparity Study, page 47.

⁴ McKinsey & Company, COVID-19's effect on minority-owned small businesses in the United States
<https://www.mckinsey.com/industries/social-sector/our-insights/covid-19s-effect-on-minority-owned-small->

disproportionately affect minority-owned small business...they tend to face underlying issues that make it harder to run and scale successfully” and “face structural challenges that underscore the underlying economic fragility of underrepresented groups...” The report found, similar to the business population at large, the hardest hit businesses are in the accommodation and food services, retail, and manufacturing industries.

As stated in Section 26.39 of MST’s DBE Program, Monterey-Salinas Transit will continue to foster small business participation, as with DBEs, by:

1. Posting all procurement opportunities on MST’s website.
2. Posting a statement on MST’s website encouraging DBEs and small businesses to pursue our procurement opportunities.
3. Posting contact information on MST’s website of small business associations, small business development centers, and other organizations that provide small business assistance.

Upon consideration of all the above information and applying it to planned projects, Monterey-Salinas Transit has determined that there is no reason to adjust its base figure. The goal of 1.5% appears to be obtainable and remains similar to MST’s previous overall triennial goal (1%).

PROPOSED OVERALL DBE GOAL

The final Proposed Overall DBE Goal for FFY2021-2023 for Monterey Salinas Transit’s FTA-assisted contracts is 1.5%. As part of the prescribed goal-setting methodology, MST must project the percentage of its proposed overall goal that can be met utilizing race-neutral and race-conscious measures.

Race-Conscious & Race-Neutral Projection

Monterey-Salinas Transit has achieved its goal through race-neutral means over the last seven federal fiscal years. Previous analysis has shown that DBEs perform well in consulting, architecture, engineering, and construction contracts, but have not successfully competed in transportation and other services. Since the projected contracting opportunities during the next triennial period provide for consulting and engineering opportunities and MST has been successful in meeting its overall goal, it will continue to employ an entirely race-neutral program (**Table 5**). If MST is ever unable to achieve this goal in a Federal fiscal year, a short-fall analysis will be completed.

[businesses-in-the-united-states#](#)

Table 5: Race-conscious and Race-neutral Measures

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
DBE Base Figure	1.5%
Race-Conscious Component	0.00%
Race-Neutral Component	1.5%

Race-Neutral Implementation Measures

Per Section 26.51(a-c) of MST's DBE Program, MST will continue to meet its overall goal using race-neutral means of facilitating DBE participation. MST will use one or more of the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses.
2. Encouraging prime contractors to subcontract to DBEs portions of work that they might otherwise perform with their own forces.
3. Posting contact information on MST's website of small business associations, small business development centers, and other organizations that provide technical assistance to DBEs and small businesses.
4. Providing information in languages other than English, where appropriate.
5. Referring prime contractors to the California Department of Transportation DBE Directory which identifies all firms eligible to participate as DBEs.

Additionally, MST's procurement staff proactively sends formal solicitations to registered DBEs that have bid on previous contracts, been identified as performing work for MST prime contractors, and those firms which have been identified as ready, willing, and able to perform the required work. Pre-bid and pre-proposal conferences are held for formal procurements, which include a networking component to promote teaming opportunities between prospective prime contractors and the DBE and Small Business contracting community.

Procurement opportunities are posted on MST's website at <https://mst.org/about-mst/procurement/>. Information on its DBE program, including contact information for local small business support is maintained on a dedicated page on its website <https://mst.org/about-mst/procurement/disadvantaged-business-enterprise/>.

Monterey-Salinas Transit will monitor its progress of each year and consider whether adjustments to its DBE goal are needed. All prime contractors will be encouraged to utilize DBE subcontractors to the degree possible. All contracts that have DBE commitments will be monitored for compliance.

PUBLIC PARTICIPATION AND FACILITATION

In establishing an overall goal, MST must provide for consultation and publication. This includes:

1. Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MST's efforts to establish a level playing field for the participation of DBEs; and
2. A published notice announcing MST's proposed overall goal before submission to FTA. The notice must be posted on MST's official website. If the proposed goal changes following review by FTA, the revised goal must be posted on MST's official website.

Consultation

Monterey-Salinas Transit's DBELO presented its DBE methodology during two informative and consultive meetings. Because of the impacts and social distancing requirements in Monterey County and the state of California due to the COVID-19 pandemic, these meetings were held via Zoom platform on August 6, 2020 and August 11, 2020.

For those entities or individuals who could not access Zoom due to technical or other limitations, MST allowed for telephone, email, or written requests and correspondence, including in accessible formats, as an alternative to these meetings. All alternative correspondence was offered from the date the Zoom meetings were advertised to the end of day of the final Zoom meeting.

Publication

DBE regulations grant recipients the discretion to post the overall goal to other media sources and to provide for a 30-day comment period. Given the COVID-19 pandemic and the small number of contracting opportunities, Monterey-Salinas Transit has opted to post its FFY 2021-FFY 2023 proposed overall DBE goal and methodology on its website prior to submission to FTA, and to post any changes to its overall goal on its website after submission to FTA, as required. MST will not exercise its discretionary option to post its overall goal to other media sources nor will it conduct a 30-day comment period.

If approved by the Board of Directors, Monterey-Salinas Transit will establish a wholly race-neutral DBE goal of 1.5% for its Triennial Overall Goal covering FFY 2021 – FFY 2023.