

MONTEREY-SALINAS TRANSIT DBE PROGRAM  
July 1, 2010

**Definitions of Terms**

The terms used in this program have the meanings defined in 49 CFR §26.5.

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

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

It is the policy of Monterey-Salinas Transit to ensure nondiscrimination in the award and administration of U.S. DOT Federally assisted contracts in accord with applicable requirements of 49 CFR Part 26. MST's objectives are to:

- promote and maintain a level playing field on which all small businesses meeting the requisite size standards, including DBE's can compete fairly for U.S. DOT Federally assisted contracts awarded and administered by MST.
- ensure only firms meeting the eligibility standards set forth in 49 CFR Part 26 are permitted to participate as DBEs;
- ensure the DBE Program is narrowly tailored in accordance with applicable law;
- identify and remove barriers to the participation of all small businesses meeting the requisite size standards, including DBEs, in the bidding, award, and administration of U.S. DOT Federally-assisted contracts;
- assist the development of DBEs so they may compete successfully outside of the DBE Program;
- increase the participation of all small businesses meeting the requisite size standards, including DBEs, in the Department's procurement of materials, equipment and supplies; and
- successfully facilitate the implementation of the DBE Program using race neutral measures to the maximum extent.

The Purchasing Manager has been delegated as the DBE Liaison Officer. In that capacity, the Purchasing Manager 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 Monterey-Salinas Transit in its financial assistance agreements with the Department of Transportation.

This policy statement, adopted by the Monterey-Salinas Transit Board of Directors has been disseminated to all components of the organization. Monterey-Salinas Transit will distribute this statement to DBE and non-DBE business communities that perform work for MST on DOT-assisted contracts.

**Nondiscrimination. (§26.7)**

Monterey-Salinas Transit does not 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, Monterey-Salinas Transit does not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

**DBE Program Updates (§26.21)**

MST 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. MST understands that all changes must be approved prior to implementation.

**Quotas (§26.43)**

Federal regulations prohibit the use of quotas, and MST does not use quotas in the administration of this DBE program.

**Definitions (Section 26.5)**

Any terms used in this Program that are defined in 49 CFR § 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. Some of the most common terms are defined below:

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

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

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

Black American (including persons having origins in any of the Black racial groups of Africa);

Hispanic American (including persons of Central or South American, Cuban, Dominican, Mexican, Puerto Rican, or other Spanish or Portuguese culture or origin, regardless of race);

Native American (including persons who are Aleuts, American Indians, Eskimos, or Native Hawaiians);

Asian-Pacific American (including persons whose origins are from Brunei, Burma (Myanmar), Cambodia (Kampuchea), China, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Fiji, Guam, Hong Kong, Indonesia, Japan, Tuvalu, Kiribati, Korea, Laos, Macao, Malaysia, Nauru, the Philippines, Samoa, Taiwan, Thailand, Tonga, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), or Vietnam);

Subcontinent Asian American (including persons whose origins are from Bangladesh, Bhutan, India, the Maldives Islands, Nepal, Pakistan, or Sri Lanka);

A woman; or

A member of any additional group that is designated as socially and economically disadvantaged by the Small Business Administration.

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

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

**Race-Neutral (Section 26.5)** A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can

assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.

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

**Personal Net Worth (Section 26.5)** The net value of the assets of an individual remaining after total liabilities is deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm, or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of community property with the individual's co-owner.

**DBE Liaison Officer (DBELO) (§26.45)**

MST has designated the following individual as its DBE Liaison Officer (DBELO):

Sandra Amorim  
Purchasing Manager  
Monterey-Salinas Transit  
One Ryan Ranch Road  
Monterey, CA 93940

Phone: (831) 393-8127  
Fax: (831) 899-3954  
Email: samorim@mst.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Monterey-Salinas Transit complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager/CEO concerning DBE program matters. The DBELO devotes a portion of her time to the DBE program. The DBELO is also responsible for all procurement and contracting activities. An organization chart displaying the DBELO's position in the organization is found in Attachment #1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.

3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the General Manager/CEO and Board of Directors on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

### **Federal Financial Assistance Agreement Assurance (§26.13)**

Monterey-Salinas Transit has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

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.).

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

BORREGO SPRINGS Bank NA  
WESTERN ST Bank  
COMMUNITY CMRC Bank  
OMNI Bank NA

EVERTRUST Bank  
EASTERN INTL Bank  
CATHAY Bank

MST shall also encourages its prime contractors to use the services of DBE financial institutions.

### **Directory (§26.25)**

Monterey-Salinas Transit maintains a directory identifying all firms eligible to participate as DBEs and SBEs. The directory lists the firm's name and address. MST revises the Directory annually. The Directory can be obtained by contacting, Sandra Amorim, Monterey-Salinas Transit, One Ryan Ranch Road, Monterey, CA 93940, (831) 393-8127, or by e-mail at samorim@mst.org.

### **Overconcentration (§26.33)**

If the DBELO determines that DBE participation is so over-concentrated 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 over-concentration. The DBELO will seek approval of such measures from FTA and, at that time, the measures will become a part of this Program. Currently Monterey-Salinas Transit is unaware of any types of work that have a burdensome over-concentration of DBE participation.

### **Business Development Programs (§26.35)**

Monterey-Salinas Transit will not operate a business development or mentor-protégé program at the present time. If Monterey-Salinas Transit implements such a program in the future, then Monterey-Salinas Transit will describe the rationale for having the program element, the specific provisions of the element (e.g., who is eligible to participate, how does the program element work, and how interested persons would obtain information about the program element). At the time of a decision to implement a business development or mentor-protégé 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.

## **Required Contract Clauses (§§26.13, 26.29)**

### **Contract Assurance**

MST will ensure that the following clauses are placed in every DOT-assisted contract and subcontract.

## **GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS**

“The contractor 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.”

### **Diversity Program for Contracts**

MST, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a Diversity Program for Contracts in accordance with federal regulations 49 CFR Part 26, issued by U.S. DOT.

It is the policy of MST to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District’s construction, procurement and professional services activities. To this end, MST has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE program. In connection with the performance of this contract, the Contractor will cooperate with MST in meeting these commitments and objectives.

Pursuant to 49 CFR § 26.13, and as a material term of any agreement with MST, the Contractor hereby makes the following assurance and agrees to include this assurance in any agreements it makes with Subcontractors in the performance of this contract:

By submitting a proposal, the Contractor is deemed to have made the foregoing assurance and to be bound by its terms.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure MST achieves its federally mandated overall DBE goal, the Agency encourages the

participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with Federal Funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Bidders shall be fully informed in respect to the requirements of the DBE Regulations. The DBE Regulations in their entirety are incorporated herein by this reference. Attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto;
- B. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, vendor of material or supplies, or as a trucking company;
- C. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest. ;
- D. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work;
- E. DBEs must be certified by the California Unified Certification Program (CUCP).
- F. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:
  1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning,

operating, or maintaining a place of business as provided in this paragraph F.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph F.2.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

G. When reporting DBE participation, bidders may count the participation of DBE trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs;
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
6. For the purposes of this paragraph G, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

H. Bidders are encouraged to use services offered by financial institutions owned and controlled by DBEs.

## **PROMPT PAYMENT**

### **Prompt Progress Payment to Subcontractors**

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. 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.

### **Prompt Payment of Withheld Funds to Subcontractors**

No retainage will be held by MST from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

### **Monitoring and Enforcement Mechanisms (§26.37)**

The DBELO shall monitor and the accounting department shall track the actual DBE participation through contractor and subcontractor reports of payments, and other appropriate monitoring, as further described in Attachment # 2.

The DBELO shall ensure that DBE participation is counted toward the overall annual goal in accordance with the Regulations.

MST will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to

the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. MST also will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

### **Reporting to U.S. DOT (Section 26.11)**

The DBELO will continue to provide the reports regarding DBE participation required by the Regulations to U.S. DOT.

### **No Quotas or Set-Asides (Section 26.43)**

MST does not, and will not, use quotas nor set-asides in any way in the administration of this Program.

### **Overall Goals (§26.45)**

#### **DETERMINING, ACHIEVING GOALS AND COUNTING OVERALL ANNUAL DBE PARTICIPATION (Section 26.45)**

MST shall establish overall annual goal on a fiscal year basis for the participation of DBEs in all budgeted contracts utilizing U.S. DOT federal financial assistance. The overall annual goals shall be expressed as a percentage of the total amount of U.S. DOT funds that MST anticipates expending in the fiscal year. MST's overall annual goal represent the amount of ready, willing and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation that MST would expect absent the effects of discrimination. MST intends to meet this goal to the maximum extent feasible through exclusively race-neutral measures.

Monterey-Salinas Transit's overall goal for FY 2011 is the following: 4.5% of the Federal financial assistance MST will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

## Monterey-Salinas Transit DBE METHODOLOGY

### A. DOT-Assisted Contracting Program for FY 2011

The following represents MST's projected DOT/FTA funded contracts and expenditures by work category and corresponding BART Expertise Code (BEC) Classification system for FY 2011.

WORK CATEGORY	BART Expertise Codes	ESTIMATED FEDERAL DOLLAR CAPITAL FUNDS	ESTIMATED FEDERAL DOLLAR OPERATING FUNDS	% OF FEDERAL FUNDING BY WORK CATEGORY	DBE's /other Firms
<b>NON-CONTRACTING OPPORTUNITIES</b>	N/A	\$1,110,507	\$4,735,130	64%	0/0
<b>CONSTRUCTION</b>	300	\$184,900	\$0	2%	15/83
<b>PROFESSIONAL SERVICES</b>	200	\$0	\$445,269	5%	45/177
<b>MATERIALS/SUPPLIES EQUIPMENT</b>	500	\$928,739	\$1,002,870	20%	22/217
<b>OTHER</b>	400	\$0	\$790,688	9%	43/271
<b>TOTAL</b>		<b>\$2,246,944</b>	<b>\$6,772,835</b>	<b>100%</b>	

### B. Goal-Methodology

#### Step1: Determination of a Base Figure (49 CFR 26.45)

MST has decided to use the following methodology in establishing MST Base Figure of relative DBE availability for FY 2011.

For the Numerator: DBE Firms in MST's DBE List  
 For the Denominator: All Firms in MST's Vendor List

MST will calculate its weighted Base Figure by first determining the number of ready, willing and able DBEs in its FY 2011 DBE List by work category, and dividing the number of DBEs by the total number of firms in the same work category. Through this method, MST can measure availability by the number of firms that have directly participated in, or attempted to participate in, MST's DOT/FTA-assisted contracting in FY 2010.

Application of this formula yields the following base figure information:

Number of Ready, Willing and Able DBE's = BASE FIGURE  
Number of All Ready, Willing and Able Firms

The Base Figure resulting from this calculation is as follows: Bart Expertise Codes (BEC)

$$\text{Base Figure} = \frac{(\% \text{ of Fed Funding by Work Category } (\% \text{FFWC}) * (\text{DBEs in BEC}) + (\% \text{ of Fed Funding by Work Category}) * (\text{DBEs in next BEC work category}) + (\# * \#) + (\# * \#) + (\# * \#) + (\text{ETC}))}{\text{All Firms in this BEC work category}}$$

$$\frac{(\% \text{ of Fed Funding by Work Category}) * (\text{DBEs in next BEC work category}) + (\# * \#) + (\# * \#) + (\# * \#) + (\text{ETC})}{\text{All Firms in this BEC-work category}}$$

$$\frac{(\# * \#) + (\# * \#) + (\# * \#) + (\text{ETC})}{\text{All Firms in these BEC work categories.}}$$

$$\text{Base Figure} = \frac{2\%(\text{DBE's in 300}) + 5\%(\text{DBE's in 200}) + 20\%(\text{DBE's in 500}) + 9\%(\text{DBE's in 400})}{\text{All Firms in 300} \quad \text{All Firms in 200} \quad \text{All Firms in 500} \quad \text{All Firms in 400}}$$

$$\frac{9\%(\text{DBE's in 400})}{\text{All Firms in 400}}$$

$$\text{Base Figure} = \left\{ \frac{2\%(15)}{(83)} + \frac{5\%(45)}{(177)} + \frac{20\%(22)}{(217)} + \frac{9\%(43)}{(271)} \right\}$$

$$\text{Base Figure} = [2\%(.1807) + 5\%(.2542) + 20\%(.1013) + 9\%(.1587)]$$

$$\text{Base Figure} = [.0036 + .0127 + .0202 + .0142] \times 100$$

$$\text{Base Figure} = 0.0507 \times 100 = 5.07\%$$

**Base Figure = 5.07%**

## Step II: Adjusting the Base Figure

As this is the tenth year that MST has used this methodology in determining its overall annual DBE goal, it was concluded that there is enough historical data to more closely tailor MST's Base Figure to MST's marketplace. Contracting opportunities over the past five-year were generally similar for DBE participation.

The historical actual annual goals for the past six years are presented below:

- 2005 = 3%
- 2006 = 3%
- 2007 = 3%
- 2008 = 4%
- 2009 = 6%
- 2010 = 4.5%

The historical median of these past DBE percentages is 4%. The average is 4%. Next the historical median past participation of 4% is averaged with MST's step # 1 base figure of 5.07%:

$$4\% + 5.07\% = 9.07 \quad 9.07/2 = 4.53\%$$

Therefore, step # 1 Base Figure was adjusted for FY 2011 to four and a half (4.5) percent.

**MST's DBE goal is 4.5% for FY 2011 and MST will achieve the entire goal through race-neutral means.**

While in the past MST has split the goal between race-neutral and race-conscious, we must now seek a wholly race-neutral DBE program effective May 1, 2006. The race-neutral DBE Program may be an interim step, pending the results of an availability and a disparity study to guide administration of MST's DBE Program in accordance with 49 Code of Federal Regulations (CFR) Part 26.

The California Department of Transportation (Department) after receiving a letter from Mr. Gene K. Fong, Administrator, from the Federal Highway Administration, was advised that each state transportation agency is to assess whether it has sufficient evidence of discrimination or its effects on transportation contract in order to support a DBE race-conscious program. Absent such evidence, the state transportation agency must revise its DBE Program to request approval to implement a wholly race-neutral program while the Department takes a more detailed assessment, such as a disparity study.

The California Department of Transportation (Department) gathered and considered past disparity studies, comments, and written evidence received during a 90-day public comment period ending March 20, 2006. While there was a suggestion of discrimination in some of the information received, after careful analysis, the Department, in consultation with DOT staff, concluded the data lacks sufficient evidence to satisfy the strict scrutiny and newly established evidentiary standards set forth by the Ninth Circuit Court of Appeals in order to continue with a race-conscious DBE program.

DOT's conclusion was based on the following factors:

1. The data provided did not identify specific evidence of discrimination suffered by any of the presumptively disadvantaged groups identified in 49 CFR Part 26.5 in the transportation contracting industry in the State of California.
2. The available disparity studies conducted in California were limited in scope to a local government agency or a project, geographically and chronologically limited, and did not provide valid "statistical evidence" of discrimination in transportation contracting.
3. The anecdotal evidence related to transportation contracts in California could not be verified.

As noted above, the race-neutral DBE Program may be an interim step, pending the results of an availability study and a disparity study. Accordingly, effective May 1, 2006 MST as a federal transportation assistance subrecipient will implement a DBE race neutral program pending the results of a more comprehensive study of the facts. This study is to be conducted by the California Department of Transportation. MST will take its direction from the mandates of the study.

### **Transit Vehicle Manufacturers (§26.49)**

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

### **Process**

Monterey-Salinas Transit submits its overall goal to DOT on August 1 of each year.

MST will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice, and informing the public that MST and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in The Monterey County Herald and The Salinas Californian. Normally, MST will issue this notice by June 1 of each year. The notice includes addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

MST will begin using its overall goal on October 1 of each year, unless MST has received other instructions from DOT.

Notices were placed in the Monterey County Herald, the Salinas Californian and APTA Passenger Transport. Public comments received and their responses will be forwarded after 45 days from date of published notice.

MST will Estimate Race-Neutral Participation by establishing a listing of DBE's and SBE's in its relevant contracting markets in which MST has solicited participation from these firms.

Monterey-Salinas Transit will meet its overall goal by using race-neutral means of facilitating DBE participation. Monterey-Salinas Transit will use one or more of the following race-neutral means to increase DBE participation:

1. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Provide assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Provide technical assistance and other services; Carry out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors) Implement a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
4. Provide services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
5. Establish a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
6. Ensure distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
7. Assist DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

MST will track race-neutral participation per (per §26.51(f)). For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Counting DBE Participation (§26.55)**

MST will count DBE participation toward overall and contract goals as provided in 49 CFR §26.55.

## **Certification (§§26.61 – 26.91)**

Monterey-Salinas Transit will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E 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. MST will make certification decisions based on the facts as a whole. The MST certification process is subject to change, and will comply with California's Uniform Certification Program when said program is developed.

### **Process**

The Monterey-Salinas Transit certification application form and documentation requirements are included as Attachment 3.

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

Sandra Amorim  
Purchasing Manager  
Monterey-Salinas Transit  
One Ryan Ranch Road  
Monterey, CA 93940  
(831) 393-8127  
Fax: (831) 899-3954  
Email: samorim@mst.org

### **Certification Appeals**

Any firm or complainant may appeal California's Uniform Certification Program's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7<sup>th</sup> St., SW, Room 2104  
Washington, DC 20590

MST will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for its DOT-assisted contracting (e.g., certify a firm if DOT has determined that California's Uniform Certification Program's denial of its application was erroneous).

### **“Re-certifications”**

MST will refer all re-certifications of DBE's to California's Uniform Certification Program.

## **“No Change” Affidavits and Notices of Change**

MST requires all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with the application for certification.

MST also requires all owners of all DBEs that California’s Uniform Certification Program has certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

*I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to Monterey-Salinas Transit under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.*

## **Information Collection and Reporting**

### **Bidders List**

Monterey-Salinas Transit will create a bidder list, consisting of information about all DBE, SBE 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. The bidder list will include the name, address, DBE SBE and non-DBE status, age, and annual gross receipts of firms.

MST will collect this information through the use of California’s Uniform Certification Program certification information and also a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

### **Monitoring Payments to DBEs**

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

MST will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

MST 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.

### **Reporting to DOT**

MST will report DBE participation to DOT as follows:

MST will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

### **Confidentiality**

MST will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law [program should summarize applicable state and local law, such as state FOIA laws and how they apply]. 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.

## Attachments

	Attachment
DBE Program Management Organization Chart	1
Monitoring and Recordkeeping (Sections 26.11 and 26.37)	2
DBE Certification Application Form	3

Attachment # 1

**Monterey-Salinas Transit  
DBE Program Management**

Carl G. Sedoryk  
General Manager/CEO

Hunter Harvath  
Assistant General Manager for Finance &  
Administration

Sandra Amorim  
Purchasing Manager

**MONITORING AND RECORDKEEPING (Sections 26.11 and 26.37)**

**Bidders List (Section 26.11)**

MST will require all prime contractors bidding on U.S. DOT-assisted contracts to return, at the time of bid opening (options apply as to the time this information is required so long as it is prior to the award of the contract), the following information about the prime contractor and all subcontractors who provided a bid or were contacted by the prime: This information shall be submitted on the BIDDERS LIST provided below.

Monterey-Salinas Transit  
**BIDDERS LIST**

All bidders/proposers are required to provide the following information for all DBE and non-DBE contractors, who provided a proposal, bid or quote. This information is also required from the proposed prime contractor, and must be submitted with their bid/proposal. Monterey-Salinas Transit (MST) will use this information to maintain and update a "Bidders" List to assist in the overall annual goal DBE goal setting process. To the extent permitted by law, all information submitted will be held in strict confidence and will not be shared without your consent.

Firm Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_ No. of Yrs. In Business \_\_\_\_\_

Is the firm currently certified as a DBE by MST?  No  Yes  
Certification # \_\_\_\_\_

Type of work/services/materials provided by firm? \_\_\_\_\_

What were your firm's Gross Annual receipts for last year?

- Less than \$1 million
- Less than \$5 million
- Less than \$10 million
- Less than \$15 million
- More than \$15 million

MST will use this information to maintain and update its Bidders List.

### **Monitoring Payments to DBEs (Section 26.37)**

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MST or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

MST will maintain a running tally of payments actually made to DBE firms and may require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

MST may 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 report of proposed DBE participation.

### **Reporting to U.S. DOT (Section 26.11)**

MST will continue to report DBE participation and overall annual goal setting methods to U.S. DOT agencies as directed. Statistical data will be maintained as prescribed on a quarterly basis to provide reports to U.S. DOT agencies reflecting the DBE participation on MST's federally-assisted procurement activities. These reports will provide DBE participation information on the MST's race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally assisted procurement activities.

### **Contract Remedies (Section 26.37)**

MST will monitor compliance of its contractors on federally assisted contracts with the requirements of the Regulations and the DBE Program. MST may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retention's, imposition of liquidated damages, and termination of the contract in whole or in part.

ATTACHMENT # 3

If you desire to qualify for Disadvantage Business Enterprise (DBE) status the web address for California Unified Certification Program (CUCP) is:

[http://www.dot.ca.gov/hq/bep/downloads/Word/Application\\_Package\\_Form](http://www.dot.ca.gov/hq/bep/downloads/Word/Application_Package_Form).  
If you are a DBE please provide a copy of your CUCP certificate.

AFFIDAVIT FOR DISADVANTAGED BUSINESS ENTERPRISE

STATE OF \_\_\_\_\_:

COUNTY (CITY) OF \_\_\_\_\_:

I HEREBY DECLARE AND AFFIRM THAT I AM THE \_\_\_\_\_(Title) and duly authorized representative of \_\_\_\_\_ (name of corporation/firm) whose address is \_\_\_\_\_. I hereby declare and affirm that my firm is a certified Disadvantaged Business Enterprise or Women-Owned Business Enterprise as defined by California Unified Certification Program. The above, named firm will provide MST with a copy of the document from the California Unified Certification Program so affirming their DBE status.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_(AFFIANT)\_\_\_\_\_(DATE)

STATE OF \_\_\_\_\_:

COUNTY (CITY) OF \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,