

CITY OF SALINAS

Public Works
Department
200 Lincoln Avenue
Salinas, CA 93901



Disadvantaged
Business Enterprise (DBE)
Program
Updated June 2021

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49 Code of Federal Regulations Part 26

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CITY OF SALINAS DBE PROGRAM

OBJECTIVES/POLICY STATEMENT (§ 26.1, 26.23)


The City of Salinas, (herein after identified as the City), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the City to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT - assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

David Jacobs, Public Works Director has been delegated as the DBE Liaison Officer. In that capacity, Mr. Jacobs, 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 the City in its financial assistance agreements with the Department of Transportation.

The City has disseminated this policy statement to the City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on City DOT-assisted contracts. The distribution was accomplished by presenting at a public meeting and made available on the City's Public Works Department website.



David Jacobs, P.E.
Public Works Director

8-4-21

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The City is the recipient of DOT and Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The City will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The City 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, the City will 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.

Section 26.11 Record Keeping Requirements

Reporting to DOT (§ 26.11(b))

The City will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to DOT/FAA as follows:

The City will transmit to FAA annually, by or before December 1st, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The City will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List (§ 26.11(c))

The City will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on City contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s):

All contract specifications will include a contract clause requiring prime bidders to report the names/addresses, and annual gross receipts of all firms who quote to them on subcontracts. The City will request this information be submitted using the Bidder's List form (see **Attachment 3**) by the lowest and second lowest bidder within five (5) business days of opening bids.

Section 26.13 Federal Financial Assistance Agreement

The City has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance – Each financial assistance agreement the City signs with DOT operating administration (or a primary recipient) will include the following assurance:

The City 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 City 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 City DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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.*).

Contract Assurance (§ 26.13(b)): The City will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City is required to have a DBE Program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year. The City is not eligible to receive DOT financial assistance unless DOT has approved this DBE Program and the City is in compliance with it and Part 26. The City

will continue to carry out this program until all funds from DOT financial assistance have been expended. The City does not have to submit regular updates of the DBE Program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the City:

*Mr. David Jacobs, Public Works Director
Public Works Department
City of Salinas
200 Lincoln Avenue, Salinas, CA 93901
Telephone: (831) 758-7241
Email: davidj@ci.salinas.ca.us*

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE Program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) to assist in the administration of the program. The duties and responsibilities 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. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City' progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Council on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City to investigate the full extent of 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 Federal Reserve Board website (<https://www.fdic.gov/regulations/resources/minority/mdi.html>) to identify minority-owned banks derived from the Consolidated Reports of Condition and income filed quarterly by banks. To date, the following minority-owned financial institutions have been identified, which offer services in California:

NEW OMNI BANK NATIONAL ASSN
AMERICAN PLUS BANK N A
BROADWAY FEDERAL BANK FSB
GATEWAY BANK FSB
MISSION NATIONAL BANK
ASIAN PACIFIC NATIONAL BANK
UNIVERSAL BANK
CALIFORNIA INTL BANK N A
BANK OF WHITTIER NA

Section 26.29 Prompt Payment Mechanisms

The City requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the City will include a contract clause obligating prime contractors to make prompt and full payment to the subcontractors to make prompt and full payment to the subcontractor within seven (7) calendar days after 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.

Pursuant to §26.29, the City has selected the following method to comply with this requirement:

The shall hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after for construction contracts and fifteen (15) days for consultant contracts after payment to the prime contractor.

To implement this measure, the City includes the following clause from FAA Advisory Circular 150/5370-10 (https://www.faa.gov/documentLibrary/media/Advisory_Circular/150-5370-10H.pdf) in each DOT-assisted prime construction contract:

Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in

accordance with paragraph 90-07, *Payment for Materials on Hand* of FAA Advisory Circular 150/5370-10 ("The FAA Circular"). No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

From the total of the amount determined to be payable on a partial payment, five percent (5%) of such total amount will be deducted and retained by the City for protection of the City's interests. Unless otherwise instructed by the City, the amount retained by the City will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the City in accordance with Section 50-14 of The FAA Circular. Contractor must provide a certified invoice to the City that supports the value of retainage held by the City for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08 of the FAA Circular

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the City to be a part of the final quantity for the item of work in question.

No partial payment shall bind the City to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment* of the FAA Circular.

The Contractor shall deliver to the City a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the City to indemnify the City against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the City may be compelled to pay in discharging any such lien or claim.

In addition, the City of Salinas included a contract clause in the Special Provisions that requires contractors to submit subcontractor and/or supplier's waiver of liens as required under Civil Code Article 8122-8138. The waiver shall be "conditional" before payment and "unconditional" after payment. The unconditional waivers ensure that all subcontractors, including DBEs are promptly paid.

Section 26.31 Directory

The City is a non-certifying member of the California Unified Certification Program (CUCP). The CUCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

Section 26.33 Over-concentration

The City has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment.

Monitoring Payments to DBEs and Non-DBEs

The City undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the 7-day clock for payment.

The City requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the City's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The City proactively reviews contract payments to subcontractors including DBEs not less than quarterly to ensure compliance. This is done by requesting and monitoring the Monthly DBE Payment Form and Final Utilization of DBE Report along with proof of payment to DBE firm (i.e., copy of cleared check). Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor.

Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The City's Project Manager will hold regular meetings (no less than monthly) to discuss project progress with Contractor's representatives.
- Should a discrepancy be identified between commitment and attainment, the City's DBELO will contact prime contractor to discuss path of action.

The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage.

1. Alternative Dispute Resolution (ADR)

- City will include in all affected project's specifications a contract clause detailing contract dispute procedures. Prime contractors will be required to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. Following is the language:

(Refer to **Attachment 11** – Public Contract Code Section 9204)

2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
 - Following is the contract clause:
 - The prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 125 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution. (for FAA Funded Projects)

Enforcement Actions for Noncompliance of Participants

The City will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.

The City will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The City reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by project managers. Contracting records are reviewed by project managers. The City will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation

The City has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City does not use quotas in any way in the administration of this DBE Program.

Section 26.45 Overall Goals

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the City will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA.

FAA:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DB_E_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City will use a Bidders List, DBE Directory information, and Census Bureau Data as a method to determine the base figure. The City understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry for past competitiveness of DBEs on contracts. The City will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the City’s market.

In establishing the overall goal, the City will allow for consultation and provide publication. This includes consultation with minority, women’s and general contractor groups, community organizations, Chamber of Commerce, Builders Exchange, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts by the City to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City is required to submit the goal methodology to the FAA for review pursuant to §26.45(f). The goal submission will document the consultation process in which the City engaged. Notwithstanding paragraph (f) (4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the City will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the City’s official internet website and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet website.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at City’s Public Works Department. This notice will provide that the City and the FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1st deadline.**

The City’s overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during this public participation process and City’s responses.

The City will begin using our overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed 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. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal

pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The City understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall has not been correctly calculated or that the method employed by the City for calculating goals is inadequate, FAA may, after consulting with the City, adjust the overall goal or require that the goal be adjusted by the City. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the US DOT operating administration (FAA) will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachments 5** to this Program.

Section 26.47 Failure to Meet Overall Goals

The City cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the City fails to administer its DBE Program in good faith.

The City understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The City understands that if its awards and commitments shown on the 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, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation can be found in **Attachment 5** to this Program.

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (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 and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing 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) Providing technical assistance and other services.
- (4) Carrying 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; provision of information in languages other than English, where appropriate).
- (5) Providing 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.
- (6) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
- (7) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The City will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of the contract goals becomes necessary in order to meet the overall goal.

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations Where There Are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate

that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

The City will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts, for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section.
- (2) All bidders or offerors will be required to submit the following information to the City, at the time provided in paragraph (3) of this section:
 - i. The names and addresses of DBE firms that will participate in the contract.
 - ii. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract.
 - iii. The dollar amount of the participation of each DBE firm participating.
 - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
 - v. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - vi. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section.
- (4) No later than five (5) calendar days after bid opening as a matter of **responsibility**. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the City.

Administrative reconsideration (§26.39 (d))

Within seven (7) working days of being informed by the City that it is not responsive or responsible because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. Steve Carrigan, City Manager
City of Salinas
200 Lincoln Avenue, Salinas, CA 93901
Telephone: (831) 758-7201
Email: steveca@ci.salinas.ca.us

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

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

Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor/materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the City. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the City agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- 1) The listed DBE subcontractor fails or refuses to execute a written contract.
- 2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- 3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- 4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- 5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215, and 1200 or applicable state law.
- 6) The City determined that the listed DBE subcontractor is not a responsible contractor.
- 7) The listed DBE subcontractor voluntarily withdraws from the project and provides the City written notice of its withdrawal.
- 8) The listed DBE is ineligible to receive DBE credit for the type of work required.
- 9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- 10) Other documented good cause that the City has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the City, a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise the City and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.*, safety), a response period shorter than five (5) days may be provided.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of, or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work or supply the materials for which each is listed unless the contractor obtains prior written consent of the City as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract, with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary, at the request of the contractor. The City shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the City may issue an order stopping all or part of payment/work until satisfactory action is completed. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Section 26.55 Counting DBE Participation

DBE participation will be counted towards overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted towards a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City is a non-certifying member of the California Unified Certification Program (CUCP). CUCP will use the certifications 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. Certifying California UCP members make all certification decisions based on the facts as a whole.

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

California Department of Transportation
Office of Civil Rights Certification Branch
1823 14th Street
Sacramento, CA 95811
(916) 324-1700
TTY: 711
Email address: DBE.Certification@dot.ca.gov

The Uniform Certification Application form and documentation is available to view and download within the following link provided in **Attachment 8** to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City will rely upon CUCP, their certifying agencies, certification procedures and decisions by verifying DBE eligibility via Caltrans database.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the City

The City understands that if it fails to comply with any requirement of this part, the City may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

Notwithstanding any provisions of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting

information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants, and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The City, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The City understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

Attachment 1	Website link to Regulations: 49 CFR Part 26
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	Link to DBE Directory
Attachment 5	Overall DBE Three-Year Goal Methodology
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan (Forms 1 & 2)
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form
Attachment 9	State's UCP Agreement
Attachment 10	Small Business Element Program
Attachment 11	Public Contract Code Section 9204

Attachment 1

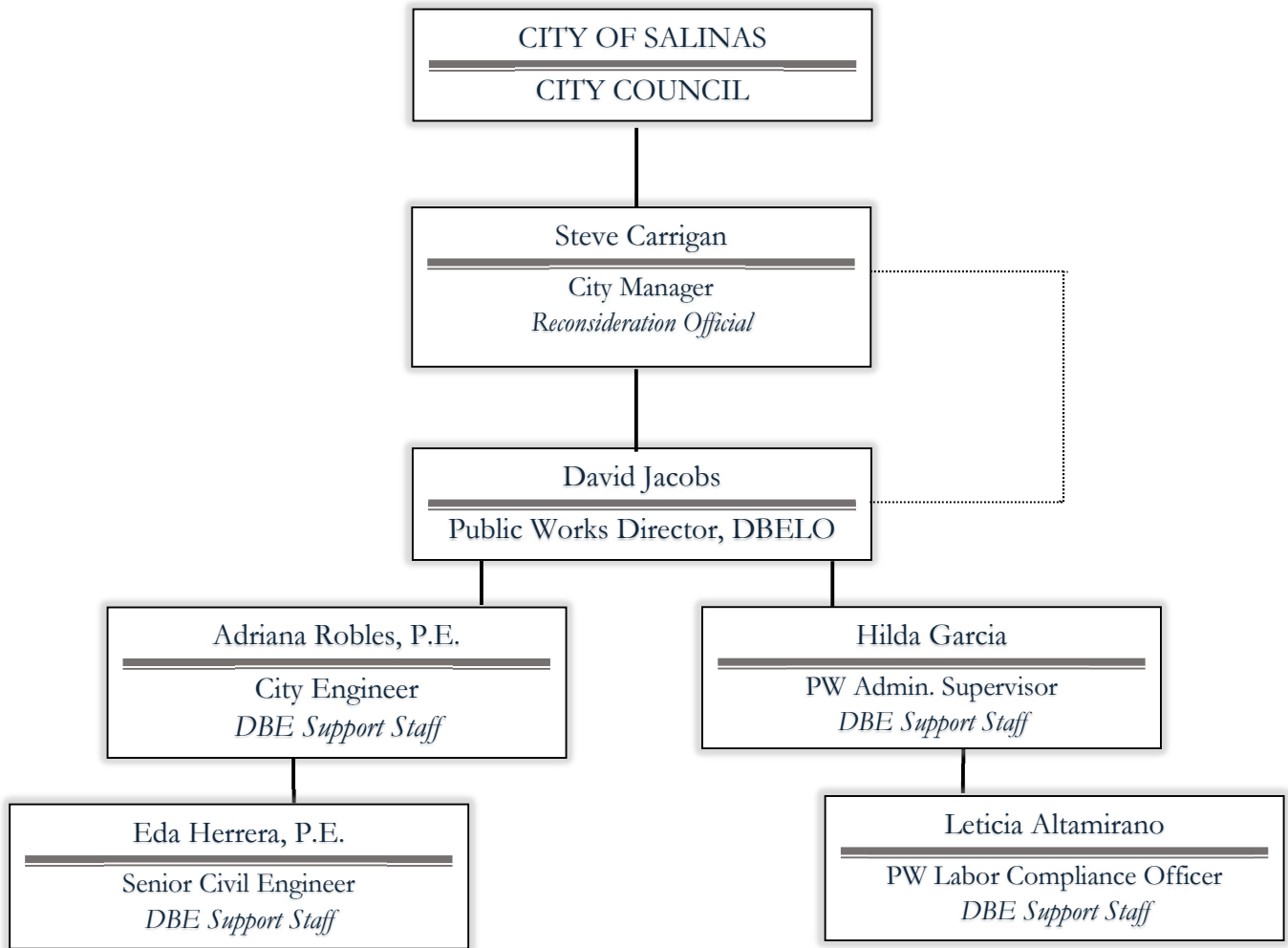
Regulations: 49 CFR Part 26

Link to website:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=c20fe40a51a024ffe24552da95d244c3&mc=true&node=pt49.1.26&rgn=div5>

Attachment 2

Organizational Chart



DBELO has direct access to the City Manager.

**Attachment 3
Bidder's List Collection Form**

(SAMPLE BIDDERS LIST COLLECTION FORM)

[Reminder: the information below must be collected from every bidder who submits a quote/bid to the recipient and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires recipients to collect information from all bidders and subcontractors, including unsuccessful ones.]

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

**Attachment 4
DBE Directory**

The DBE Directory is available to view electronically online at
<https://ucp.dot.ca.gov/licenseForm.htm>

Attachment 5
Overall DBE Three-Year Goal Methodology

Name of Recipient: City of Salinas – Salinas Municipal Airport

Goal Period: FY-2022-2023-2024 – October 1, 2021 through September 30, 2024

DOT-assisted contract amount:	FY-2022	\$ 247,500
	FY-2023	\$ 905,850
	FY-2024	\$ 1,040,400
	Total	\$ 2,193,750

A. AMOUNT OF GOAL

Overall Three-Year Goal: 13.7% to be accomplished through 11.1% RC and 2.6% RN

Total dollar amount to be expended on DBEs: \$429,393

Type of Contracts that the airport anticipates awarding:

- **Contracts Fiscal Year #1 (FY2022)**
 - Design Apron Pavement Rehabilitation - \$247,500
- **Contracts Fiscal Year #2 (FY2023)**
 - Construction -Apron Pavement Rehabilitation, Phase I - \$905,850
- **Contracts Fiscal Year #3 (FY2024)**
 - Construction -Apron Pavement Rehabilitation, Phase II - \$1,040,400

Market Area: Alameda, Kern, Monterey, Orange, San Joaquin, San Luis Obispo, Santa Clara, Santa Cruz, Solano, and Ventura Counties.

B. METHODOLOGY USED TO CALCULATE OVERALL GOAL

Step 1. Actual relative availability of DBEs:

The base figure for the relative availability was calculated as follows:

NAICS	NAICS Description	DBE Firms	Total All Firms (Census)
<u>FY 2022</u>			
541330	Engineering Services	128	3,202
<u>FY 2023</u>			
237310	Highway & Street Construction	55	212
541330	Engineering Services	128	3,202
<u>FY 2024</u>			
237310	Highway & Street Construction	55	212
541330	Engineering Services	128	3,202

The data source or demonstrable evidence used to derive the numerator (DBE Firms) was:

<https://ucp.dot.ca.gov/licenseForm.htm>

The data source or demonstrable evidence, used to derive the denominator (Census Firms) was:
<https://data.census.gov/cedsci/>

Weighted Availability of DBE Firms:

<i>Contract Name</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>DBE Firms</i>	<i>Census All Firms</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
Design Apron Pavement Rehabilitation	Engineering Services	541330	\$247,500	128	3,202	4.0%	\$9,894
<i>Fiscal Year #1 Total FY-2022</i>			\$247,500			4.0%	\$9,894
Construction - Apron Pavement Rehabilitation, Phase I	Highway & Street Construction	237310	\$724,680	55	212	25.9%	\$188,007
	Engineering Services	541330	\$181,170	128	3,202	4.0%	\$7,242
<i>Fiscal Year #2 Total FY-2023</i>			\$905,850			21.5%	\$195,249
Construction - Apron Pavement Rehabilitation, Phase II	Highway & Street Construction	237310	\$832,320	55	212	25.9%	\$215,932
	Engineering Services	541330	\$208,080	128	3,202	4.0%	\$8,318
<i>Fiscal Year #2 Total FY-2024</i>			\$1,040,400	494	10030	21.5%	\$224,250
Total FY 2022-2023-2024			\$2,193,750			19.6%	\$429,393

The base goal after weighting is as follows:

- Total Weighted DBE Availability: **\$429,393**
- Total for All Trades: **\$2,193,750**

Dividing the weighted DBE totals by the total estimate for all trades, gives a base DBE availability figure for the projects anticipated during the goal setting period. This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Base DBE Goal: **19.6%**

Step 2: Adjustments to Step 1 Base Figure

After calculating the base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the final overall goal.

Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

<i>Project Bid Opening Date</i>	<i>CIP No.</i>	<i>Project Description</i>	<i>Contract DBE Goal</i>	<i>Actual DBE Use</i>
April 2019	9157	Runway 8-26 and Heliport Rehabilitation	9.2%	26.0%
June 2018	9275	Runway 13-31 and Runway 8-26 Rehabilitation Improvements	11.3%	0.0%
January 2019	9089	North Sanborn Road Safety Improvements	9.6%	12.2%
April 2016	9225	Electrical Upgrades Salinas Municipal Airport Improvements	3.0%	3.4%

Median Figure used in Step 2 to adjust Base Figure

Since there is an even number of figures the average of two middle figures will be used $((3.4+12.2)/2=7.8)$. Arranging this historical data from low to high, (0.0%, 3.4%, 12.2%, 26.0%) the median is **7.8%**.

Step 1 Base averaged with historical median: $(19.6\% + 7.8\%)/2 = \mathbf{13.7\%}$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **13.7%**. The City believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from the relevant jurisdictions to show evidence of barriers to entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

Step 3 Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.

The City will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation. The City uses the following RN means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing technical assistance and other services;
3. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
4. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
5. Assist DBEs and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The City estimates that in meeting the established overall goal of **13.7%**, it will obtain **2.6%** from RN participation and **11.1%** through RC measures.

This breakout is based on:

- a) In FY-18/19, the City accomplishments exceeded the goal by a median 2.6%, which may be construed as evidence of race-neutral participation. Therefore, 2.6% of the 13.7% goal is expected through race-neutral means and the remaining 11.1% is to be obtained by race-conscious measures.

The City will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained 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.

Public Participation (both consultation and published noticed)

Consultation:

In establishing the overall goal, the City provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was a public City Council meeting, which was held at 4:00 pm on June 22, 2021 via teleconference, in accordance with State of California Executive Order No. N-29-20 and N-35-20.

ZOOM WEBINAR PARTICIPATION
JOIN THE ZOOM WEBINAR TO PARTICIPATE LIVE AT:
<https://us02web.zoom.us/j/83624845014>

To participate telephonically, call any number below:
US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 301 715 8592 or +1
312 626 6799 or +1 646 558 8656

Webinar ID: 836 2484 5014

If prompted to enter a participant ID, press #.

A notice of the proposed goal was published on the City's official website before the methodology was submitted to the FAA. Any comments received will be included in this Program before final print.

If the proposed goal changes following review by the FAA, the revised goal will be posted on the City official website.

Notwithstanding paragraph (f) (4) of §26.45, the City proposed goals will not be implemented until this requirement has been met.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

Attachment 7
DBE Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE Program, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001

Attachment 8
DBE Certification Application Form

DBE Certification Form is available to view electronically and download online at:
<https://www.transportation.gov/sites/dot.gov/files/2021-02/uniform-certification-application%202.8.2021.pdf>

Attachment 9
State's UCP Agreement

The City is a Non-Certifying CUCP Member.

Note: All certifying agencies that do perform Disadvantaged Business Enterprise (DBE and/or ACDBE) Certification on behalf of the State of California can be found electronically and downloaded online at <https://dot.ca.gov/-/media/dot-media/programs/civil-rights/documents/dbe/cucp-roster-of-certifying-agencies-1-2021-all.pdf>

Attachment 10 Small Business Element

Objective/Strategies

In accordance with 49 CFR Part 26, the City's DBE Program has been revised to include a Small Business Element, which will include ways to facilitate competition by small business enterprises (SBE), taking all reasonable steps to eliminate obstacles to their participation.

In order to further promote small business participation, the City will consider, on a case-by-case basis, unbundling contracts in order to enable small businesses to bid as prime contractors. On larger contracts, prime contractors will be encouraged to provide subcontracts appropriate to small businesses.

Small Business Participation Plan – Strategy

The City intends to carry out the objectives of this part by employing the following strategy and supporting activities:

1. Establishment of Race-Neutral Subcontracting Goals

The City proposes that, where feasible on certain prime contracts that do not have a DBE contract goal that prime contractors will provide subcontracting opportunities to qualified Small Businesses Concerns (SBC), without regards to race or gender of the business owner. The opportunities must be of a size that SBCs, including some, which may also happen to be DBE's, can reasonably perform. The City will assess the feasibility for race-neutral subcontracting goals on projects. The City will assist the potential prime contractors by suggesting potential subcontracting opportunities in the solicitation documents. This will help to establish a reasonable race-neutral subcontracting goal.

Note: For purpose of this section, the phrase "where feasible" means where the Small Business Plan strategy can be implemented without significant adverse impact to the project cost or schedule.

Definition

Small Business

For the purpose of this program, an SBE defined firm shall have the same definition as Small Business Concern that does not exceed the Business Size Standard as established by the U.S. Small Business Administration (SBA).

Verification

The City will rely upon the State's Department of General Services' Office of Small Business & Disabled Veteran Business Enterprise Services (OSDS) database to verify SBE eligibility.

An important part of the City's small business element is its outreach activities. These outreach efforts include active, effective steps to increase small business participation by implementing the following:

1. Soliciting bids/proposals from DBEs and SBEs.
2. Responding to requests for information.

3. Informing and inviting DBEs and SBEs to participate at pre-bid and pre-proposal meetings; and
4. Identifying and Publishing training opportunities.

Monitoring/Record Keeping

The City will track any race neutral participation by currently certified DBEs and SBEs. To the extent feasible, data on small business participation, will be collected and maintained to respond to any future questions regarding the results of the City's DBE Program.

Assurance

1. The program is authorized under state law.
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

Supportive Services

Small Business Development Center
106 Lincoln Avenue
Salinas, CA 93901
Phone: 831-422-6232

Website: <https://csumb.edu/sbdc>

California Coastal Rural Development: <http://www.calcoastal.org/>

U.S. Small Business Administration - <https://www.sba.gov>

Attachment 11
Public Contract Code Section 9204

[State of California](#)
[PUBLIC CONTRACT CODE](#)
[Section 9204](#)

9204. (a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion

is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2019, Ch. 489, Sec. 1. (AB 456) Effective January 1, 2020. Repealed as of January 1, 2027, by its own provisions.)