



South Central Regional Transit District

Disadvantaged Business Enterprise Program

Federal Fiscal Years 2022 – 2025

December 2022

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statements

The South Central Regional Transit District (SCRTD) 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 South Central Regional Transit District has received Federal financial assistance through the Federal Transit Administration (FTA). As a condition of receiving this assistance, the South Central Regional Transit District has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the South Central Regional Transit District 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:

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

The Finance Officer of South Central Regional Transit District has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Finance Officer will be 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 South Central Regional Transit District in its financial assistance agreements with the U.S. Department of Transportation.

The South Central Regional Transit District has disseminated this policy statement to the SCRTD Board of Directors and all of the components of the organization. Additionally, the South Central Regional Transit District has publicized its program objectives to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through locally published newspaper advertisements, South Central Regional Transit District web site, and in any Invitation for Bids (IFB), or Requests for Bids (RFB), or Requests for Proposals (RPP issued by the SCRTD).

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program. The entire content of 49 CFR Part 26 including complete guidance on the DBE program may be obtained from the DBE Liaison officer noted in Section 26.25 of this policy, or from the South Central Regional Transit District website at: www.scrtd.org. The numbered sections of the South Central Regional Transit District DBE policy correspond to section numbers in 49 CFR Part 26, which mandate the required policy elements for recipients of DOT funds.

Section 26.3 Applicability

The SCRTRD is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.3 Applicability

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Section 26.7 Non-Discrimination Requirements

The South Central Regional Transit District 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 South Central Regional Transit District 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 South Central Regional Transit District will report DBE participation to DOT as follows:

The South Central Regional Transit District 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. Historical reporting as a subrecipient has been on “DBE Program Reporting Form Awards and Commitments” provided by NMDOT. The SCRTRD will report in compliance with federal requirements and may accommodate the reasonable requests of NMDOT for reporting information as well.

Bidders List: 26.11(c)

The South Central Regional Transit District will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of

this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age of firm, and annual gross receipts of firms.

The South Central Regional Transit District will collect this information in the following ways:

SCRTD refer to the current list of DBE firms provided online by NMDOT. To derive the total number of businesses in the SCRTD service area, SCRTD will use the U.S. Census Bureau's most recent year's Economic Census Summary Statistics for New Mexico (<https://www.census.gov/programs-surveys/economic-census.html>). When it is appropriate, estimates from the Census Bureau's American Community Survey (ACS) program will be used for more up-to-date information. The relative availability of DBE's within the SCRTD service area is expressed as a percentage of DBEs registered with NMDOT. This percentage is used to determine the SCRTD overall DBE goal. The SCRTD will, to the best of its ability, evaluate the capacity of a business to perform the work on each project when estimating DBE goals.

The South Central Regional Transit District will require prospective bidders on DBE program eligible projects to submit forms as shown in Attachments 2-A through 2-F to document good faith efforts to obtain DBE business as part of their proposal. These forms include information such as a list all of subcontractors including addresses, phone numbers if they are DBE or Non- DBE, the age of the firm, and annual gross receipts information. Failure to provide the information could disqualify a bid proposal.

Section 26.13 Federal Financial Assistance Agreement

The South Central Regional Transit District has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The South Central Regional Transit District 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. As a recipient, the SCRTD 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 SCRTD DBE Program, as required by 49 CFR Part 26 and as approved by the DOT agency, 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 South Central Regional Transit District 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.*).

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

Contract Assurance: 26.13b

The South Central Regional Transit District will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The South Central Regional Transit District will continue to carry out this program until all funds from DOT financial assistance have been expended. The South Central Regional Transit District will provide updates to the applicable DOT agencies when there are significant changes to the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The South Central Regional Transit District has designated the following individual as the SCRTD DBE Liaison Officer:

Adam Shea
Finance Officer
830 Anthony Dr.
Anthony, NM 88021
ashea@scrtd.org
(575) 323-1620

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the South Central Regional Transit District complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the SCRTD Executive Director concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 3 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO is supported by South Central Regional

Transit District Finance staff and the Chief Procurement Officer. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT and or NMDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Analyzes South Central Regional Transit District's progress toward attainment and identifies ways to improve progress.
5. Advises the SCRTD Executive Director, SCRTD Board of Directors, and the SCRTD program administrator responsible for the DOT-funded project on DBE matters and achievement.
6. Determines contractor compliance with good faith efforts.
7. Participates in pre-bid meetings involving DOT-funded projects applicable to this program.
8. Provides outreach to DBEs and community organizations to advise them of opportunities.

In support of the DBELO, the South Central Regional Transit District's administrative staff is responsible for the following:

1. Works with all departments to set overall annual goals.
2. Updates the DBE policy references, as necessary.
3. Maintains the DBE policy and support material on the SCRTD's webpage.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.)
5. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
6. Includes DBE necessary clauses in District solicitations, and contracts in applicable DOT-funded projects.
7. Plans and participates in DBE training seminars.
8. Provides information on the Uniform Certification Process in New Mexico.

Section 26.27 DBE Financial Institutions

It is the policy of the South Central Regional Transit District 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.

We have made the following efforts to identify and use such institutions:

Section 26.29 Prompt Payment Mechanisms

The South Central Regional Transit District will include the following clause in each DOT-

assisted prime contract:

“The prime contractors or design consultants and other consultants shall pay all subcontractors or sub-consultants their respective subcontract amount for undisputed acceptable work within ten (10) calendar days from the receipt of each payment the prime contractor consultant receives from the South Central Regional Transit District. The prime contractor or consultant agrees further to return retainage payment, if applicable, to each subcontractor within thirty (30) calendar days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the South Central Regional Transit District. This clause applies to both DBE and non-DBE subcontracts.”

It should also be noted that retainage is prohibited under New Mexico Law. (See, NMSA 178, Section 57-28-5. (E).) And the District follows the New Mexico Prompt Payment Act where the state law provisions are more restrictive.

Section 26.31 Directory

A directory will be maintained listing all firms who have identified themselves as eligible to participate as DBEs. In accordance with the New Mexico Unified Certification Program Letter of Agreement with the New Mexico Department of Transportation (NMDOT), the NMDOT certifies and maintains the DBE directory for the State of New Mexico. The directory lists the firm's name, address, phone number, e-mail address, fax number, and type of work performed. The directory is revised on a continuous basis and is maintained by the NMDOT.

The South Central Regional Transit District will utilize the directory of certified firms capable of bidding on the SCRTD USDOT funded projects. This action will enable the SCRTD to take advantage of a larger pool of available certified DBEs in various specialties from throughout the state in meeting and/or exceeding the established annual DBE goal. Newly certified DBE's will be added to the consolidated directory, and those no longer qualified, as determined by NMDOT will be deleted. In any event, the directory will be revised at least annually by NMDOT.

The most current directory will be available through the NMDOT website:
<https://nmdot.dbesystem.com/>, OR obtained from the:

South Central Regional Transit District
830 Antony Dr.
Anthony, NM 88021
(575)323-1620
Website: www.scrtd.org

Section 26.33 Overconcentration

The South Central Regional Transit District has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The South Central Regional Transit District has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The South Central Regional Transit District will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The South Central Regional Transit District will bring to the attention of the relevant Department of Transportation agency (either FAA, FHWA, or FTA) any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The South Central Regional Transit District will consider similar action under our own legal authority, including responsibility determinations in future contracts. Attachment 4 lists the regulation, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. The South Central Regional Transit District will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished as follows:

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the South Central Regional Transit District shall notify the non-compliant party in writing. A compliance conference to discuss the area(s) of non-compliance will be held. In the event that the noncompliant party fails or refuses to perform in compliance with this program, a "Notice of Non-Compliance" will be transmitted. If the non-compliant party corrects the deficiencies, the "Notice of Non-Compliance" will be rescinded, and the party will be notified as to compliance. If the deficiencies are not corrected, the SCRTD will initiate administrative action against the non-compliant party, which may include but not be limited to:

- Termination of Contract
 - Initiation of appropriate suspension, debarment, or de-certification proceedings pursuant to 49 CFR Part 26.
 - Referral of any unlawful actions to the appropriate enforcement agencies pursuant to 49 CFR Part 26.
 - Prosecution pursuant to 18 USC 1001.
 - Other actions as appropriate, at the discretion of the SCRTD.
4. The South Central Regional Transit District will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. The contractor will complete a monthly monitoring form.

Section 26.39 Fostering Small Business Participation

Small business shall mean those business defined in 49 CFR 26.5. Verification shall be performed by the Finance Officer in conjunction with assistance from NMDOT. The application of this small business element shall be on a race neutral basis and shall apply to all businesses that meet the definition of a small business. Because the District has no prior experience with implementation of a race neutral small business set aside for prime contracts it will begin this element by organizing

a meeting of the Finance Officer, Legal Counsel, Finance, and the Executive Director to establish a specific set-aside for the next 2023 District fiscal year. The number of prime contracts awarded shall be assessed annually with the same DBE group that establishes the set-aside. The set-aside and contract shall be approved by the District Board as a part of its annual budget process. The District may be able to structure some contacts to benefit small businesses by requiring in the solicitation that all participating contractors and subcontractors be listed and described. The Districts Legal Counsel will integrate contract provisions into its agreements to ascertain whether the contractor is a small business. The District will also maintain a list of small businesses throughout the region that are willing to do business with the District and shall use the list when making small purchases.

Because of the Districts size it does not often have occasion to award large contracts. Therefore, a program targeting small purchases is more likely to be effective. Small purchases for the District are those purchases that are in the aggregate less than \$60,000. These contracts do not require full competition under the District's Procurement Policy and may, therefore, be more readily directed toward small businesses throughout the rural communities of Southern New Mexico.

In the case of larger purchases (in excess of \$60,000) The District will 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 sub-contractors by including disclosure requirements in its solicitations and contracts. The District will also have the DBELO review solicitations in order to suggest changes to the document that will encourage the award of contracts to small businesses.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set- asides or Quotas

The South Central Regional Transit District does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The SCRTD will annually establish overall goals for each of the three USDOT funding agencies (FHWA, FAA, and FTA) if it anticipates that it will award cumulative prime contracts exceeding \$250,000 in DOT funds under each program. We will annually establish overall goals in accordance with the two-step process as specified in 49 CFR Part 26.45. The first step is to determine the relative availability of DBEs in the South Central Regional Transit District market area. The second step is to review relevant evidence and historical data available and determine if adjustments to the base figure are needed. The FTA goal methodology for this fiscal year can be found in Attachment 5. Currently FHWA goals are established by the NMDOT.

The South Central Regional Transit District will submit its overall goals to DOT on July 1st of each year or as determined by the operating administration. Before establishing the overall goal each year, South Central Regional Transit District staff will consult various groups including but not limited to minority, women's and general contractor groups, community organizations and other official organizations which could be expected to have information concerning the ability of

disadvantaged and non-disadvantaged businesses for the DOT-assisted projects. The purpose of this consultation is to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the capacity of businesses to do the proposed work, the effects of discrimination on opportunities for DBEs, and the South Central Regional Transit District' efforts to establish a level playing field for the participation of DBE's.

Following this consultation, the South Central Regional Transit District will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the South Central Regional Transit District offices for 30 days following the date of the notice, and informing the public that the South Central Regional Transit District and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in general circulation media and available minority-focused media and trade association publications. Comments may be sent to the Finance Officer on the contact information noted in 26.25 above.

The South Central Regional Transit District will begin using our overall goal for each of the USDOT funding agencies on October 1 of each year unless we have received other instructions from DOT.

Section 26.49 Transit Vehicle Manufacturers (TVM) Goals

The SCRTD currently purchases its vehicles through a state price agreement and relies upon the State of New Mexico to assure DBE compliance. In the event that the SCRTD does its own vehicle procurement the District 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, the South Central Regional Transit District 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.

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

The South Central Regional Transit District will meet the maximum feasible portion of its overall goal by using race-neutral means facilitating DBE participation. The South Central Regional Transit District uses the following race-neutral means to increase DBE participation:

- Provides information on South Central Regional Transit District functions and its full range of contractual needs.
- Offers instructions and clarification on bid specifications, procurement policy, procedures, and general bidding requirements.
- Maintains a file of successful bid documents from past procurements and permits DBE contractors to review and evaluate such documents.
- Each awarded contract, upon request, explains why certain bids were unsuccessful.
- Provides announcements of upcoming bidding opportunities to DBE contractors.
- Provides information on project scope of work and any job performance requirements.
- Provides information and assistance on continued certification procedures, subcontracting practices, and bonding requirements, and available information on

- obtaining bonding, financing, or technical assistance.
- Ensures distribution of the DBE directories, through print and electronic means, to the widest feasible audience of potential prime contractors.

Section 26.51 (d-g) Contract Goals

The South Central Regional Transit District will use contract goals to meet any portion of the overall goal the SCRTRD does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The South Central Regional Transit District will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every 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.)

The SCRTRD will express our contract goals as a percentage of the federal share of a DOT- assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 (see links to websites noted in section 26.1).

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

The South Central Regional Transit District will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The South Central Regional Transit District treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment, and;
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) working days of being informed by the South Central Regional Transit District' Finance Officer that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Executive Director, SCRTD, 830 Anthony Dr., Anthony, NM 88021, Tel: (575) 323-1620, Fax: (575) 424-2285, e-mail: www.scrtd.org The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The South Central Regional Transit District 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the Finance Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the South Central Regional Transit District will require the prime contractor to obtain the South Central Regional Transit District prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply at the time specified, the South Central Regional Transit District contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the South Central Regional Transit District to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. **A DBE race-neutral contract goal of .65 percent has been established for FTA funded projects.** South Central Regional Transit District we will not establish race-conscious

goals until we have more history as to the success of meeting goals through race neutral means. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1) to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

The South Central Regional Transit District will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61- 26.73 Certification Process

The certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 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.

The South Central Regional Transit District is a member of the New Mexico Unified Certification Program (NMUCP). The NMDOT Office of Equal Opportunity Programs is the lead for this program and determines the eligibility of firms to participate as DBEs in DOT- assisted contracts. To be certified as a DBE in the NMUCP, a firm must meet all certification standards set forth by 49 CFR Parts 26.61 -26.73. The NMUCP will make certification decisions based on the facts.

Any bidder certified by the NMDOT under these documents is presumed by the South Central Regional Transit District to be qualified for this program.

The NMUCP will make certification decisions based on the facts. A DBE's certification will not be removed without prior notification from the State of New Mexico. Any decision-making or appealing of the DBE status will be referred to the NMDOT.

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

New Mexico Department of Transportation OEOP Bureau-DBE/NMUCP Programs 1596 Pacheco Street, Suite 107 Santa Fe, New Mexico 87505 If you need further assistance or have questions regarding completion of the application, please call the OEOP staff at (505) 827-1774 or Toll free at 1-800-544-0936.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

As noted in Section 26.61 — 26.73 above, the South Central Regional Transit District is a member of the New Mexico Unified Certification Program (NMUCP) administered by New Mexico Department of Transportation (NMDOT) Office of Equal Opportunity Programs. The NMUCP will follow all certification procedures and standards of this part, and the NMUCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations; and the NMUCP shall implement USDOT directives and guidance concerning certification matters. The agreement shall commit the South Central Regional Transit District and other recipients to ensure that the NMUCP has sufficient resources and expertise to carry out the requirements of this part. The South Central Regional Transit District will assist any bidder in the qualification process as a DBE. Additionally, we will inform bidders of any seminars given by universities, business organizations, and labor organizations that deal with DBE compliance, qualifications, and rules.

A complete description of the NMUCP can be obtained from NMDOT (see contact information in Section 26.61 -26.73 above) or by contacting the South Central Regional Transit District Purchasing Department (see contact information in 26.31 above).

Section 26.83 Procedures for Certification Decisions

Recertifications 26.83(a) & (c)

Re-certifications are the responsibility of the NMDOT through the NMUCP. The eligibility of DBEs certified under former part 23 may be reviewed to ensure compliance with the standards of Subpart E of Part 26. The NMUCP staff will complete this review at least every three years to ensure there have not been any changes in the bidder's DBE status. The NMUCP schedule for this review process will be that one-third of the firms will be reviewed each year.

"No Change" Affidavits and Notices of Change (26.83(j))

Each DBE is required to inform the NMUCP and the South Central Regional Transit District through 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 its application for certification.

The NMUCP also requires all owners of all DBEs that have been 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 the NMDOT under 26.83(1). [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 \$22.41 million."

The NMUCP requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts. If the DBE fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate under 49 CFR Part 26.109(c). The NMUCP will mail the firm, prior to its anniversary date, the annual affidavit. The firm will have 15 days to complete the affidavit, attach supporting documentation as to small business size, and return the affidavit and document to the NMUCP.

The NMUCP will require all applicants and currently certified DBE's, to submit a statement of personal net worth annually. These certification forms may be found on the NMDOT website at: <https://nmdot.dbesystem.com/>

Section 26.85 Denials of Initial Requests for Certification

When the NMUCP denies a request by a firm, which is not currently certified with the NMUCP to be certified as a DBE or denies a DBE firm whose certification has expired at the end of three years, the NMUCP will provide the firm a written explanation for denial, specifically reinforcing the evidence in the record that supports each reason for denial. All documents and other information on which denial is based will be made available to the applicant, on written request. When a firm is denied certification, it may not reapply to the NMUCP for certification for a time period of 12 months from the date the firm received the denial letter. The firm may appeal to the NMUCP's denial of certification the USDOT under 49 CFR.

Section 26.87 Removal of a DBE's Eligibility

In the event the NMUCP proposes to remove a DBE's certification, the South Central Regional Transit District will follow procedures consistent with 26.87. Federal regulations in 49 CFR Part 26 (see 26.1 for a web link to this) set forth these procedures in detail. To ensure separation of functions in a de-certification, the NMUCP ensures that the decision in a proceeding to remove the firm's eligibility is made by office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove a firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The NMUCP's method of implementing this requirement is having the Secretary of the NMDOT designate a "Hearing Officer". This hearing officer will not be assigned to the NMUCP or the Office of Equal Opportunity. The Hearing Officer shall be an individual who is knowledgeable about the certification requirements of the NMUCP.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the NMUCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave, SE
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696

Fax: (202) 366-5575

Information on how the appeals process works, how to file an appeal, or what information to provide for an appeals process can be found on the USDOT website

The South Central Regional Transit District will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that NMUCP denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

The South Central Regional Transit District will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

To the extent permitted by law in the South Central Regional Transit District 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.

Monitoring Payments to DBEs

The South Central Regional Transit District 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 the South Central Regional Transit District or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The South Central Regional Transit District will keep a running tally of actual payments to DBEs for work committed to them at the time of contract award.

The South Central Regional Transit District 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 states in the schedule of DBE participation.

ATTACHMENTS

Attachment 1: Acronyms Used in this Policy

CFR	Code of Federal Regulation
DBE	Disadvantaged Business Enterprise
DBELO	Disadvantaged Business Enterprise (program) Liaison Officer
DOT	United States Department of Transportation (also USDOT)
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
IFB	Invitation for Bids
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
NMDOT	New Mexico Department of Transportation
NMUCP	New Mexico Unified Certification Program
RFB	Request for Bids
RFP	Request for Proposals
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act — a Legacy for Users
SBA	Small Business Administration
TEA-21	Transportation Equity Act for the 21st Century
NM	Transit Vehicle Manufacturer
USDOT	United States Department of Transportation

Attachment 2: SCRTD Required DBE Forms for Bidders
Attachment 2-A: Bidders List

ATTACHMENT 2-A

Bidders List

All firms bidding or quoting on subcontracts for this DOT-assisted project are listed below.

Firm Name	Address	Certified DBE (Y or N)	Age of Firm	GRS*

*GRS — Annual Gross receipts Enter 1 for less than \$1 million Enter 2 for more than \$1 million, less than \$5 million
 Enter 3 for more than \$5 million, less than \$10 million
 Enter 4 for more than \$10 million, less than \$15 million
 Enter 5 for more than \$15 million.

Attachment 2-B: Forms 1 & 2 for Demonstration of Good Faith Efforts

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

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned has satisfied the requirements of the specifications in the following manner (please check the appropriate space):

- The bidder is committed to a minimum of ____% DBE utilization on this project.
- The bidder (if unable to meet the goal of ____% DBE) is committed to a minimum of ____ % DBE utilization on this project and has submitted documentation showing good faith effort.

Name of bidder/offer's firm: _____

State Registration No. _____

By _____
(Signature) (Title)

Address _____

Phone No. _____ Zip Code _____

FORM 2: LETTER OF INTENT

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____

(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Attachment 2-C: Bidder's Questionnaire

Sponsor's Name:

Project Name:

City, State:

Federal Fiscal Year:

Project No:

In accordance with Section 26.11 Record Keeping Requirements — Bidders List: 26.11(C) this form shall be completed by each firm and all subcontractors quoting on the project as indicated above.

Name of Bidder	Address	DBE Status (Check Box as applicable)	Age of Firm	Type(s) of work	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000-\$2,000,000 <input type="checkbox"/> \$2,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000 and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000-\$2,000,000 <input type="checkbox"/> \$2,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000 and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000-\$2,000,000 <input type="checkbox"/> \$2,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000 and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000-\$2,000,000 <input type="checkbox"/> \$2,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000 and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1,000,000 <input type="checkbox"/> \$1,000,000-\$2,000,000 <input type="checkbox"/> \$2,000,000-\$5,000,000 <input type="checkbox"/> \$5,000,000 and above

(Duplicate form as necessary)

Attachment 2-D Schedule of DBE Participation

(Must be submitted at the time of bid)

Bid Number _____

Name of Prime Contractor _____

Name of DBE Contractor	Address	Type of Work (electrical, paving, etc.) and contract items or parts thereof to be performed	Project commencement and completion date for work	Agreed Price

The failure to submit this form at the time of bid submission is a ground for rejection of the bid. The making of a material misrepresentation of fact is a ground for consideration of disqualification.

NOTE: This document will become a binding contractual agreement when signed by both the prime contractor and the disadvantaged business contractor.

Signature of Prime Contractor Official

Signature of DBE Firm Official

Signature of DBE Firm Official

Signature of DBE Firm Official

ATTACHMENT 2-E
Schedule of DBE Unavailability
 (Must be submitted at the time of Bid)

 Bid Number

 (Name of Prime Contractor)

Name of DBE Contractor	Address	Type of Work (electrical, paving, etc) and contract items or parts thereof to be performed	Reason unavailable

The undersigned certifies that the above DBE(s) was/were contacted, in good faith, and the said DBE(s) was/were unable to submit an acceptable responsive bid. Failure to fill out DBE forms is a ground for rejection of the bid. The making of a material misrepresentation of fact is a ground for consideration for disqualification.

Date: _____

Signature: _____ Title: _____

Attachment 2-F: Certification of Lack of DBE Availability

(Name)

(Title)

of _____
(Prime or General Bidder)

certify that on _____ I contacted the following disadvantaged
(Date)

Contractor to obtain a bid for work to be performed on the following contract

(Name and/or Number of Contract)

DBE Contractor	Work Items Sought
Name:	
Address:	
Phone:	

Attachment 3: Remedies for Contractors Failure to Comply

Authority to debar

- a) The purchasing manager, after consulting with the SCRTD attorney and the contract administrator, as defined by the using department, is authorized to debar a person for cause from consideration for the award of future SCRTD contracts for a specified period of time. The debarment may apply to a person in his individual as well as corporate capacity. The debarment shall be for a period of not more than three years.
- b) The causes for debarment shall include one or more of the following:
 - (1) Conviction for commission of a criminal offense as an incident of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
 - (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a SCRTD contractor.
 - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
 - (4) Violation of any SCRTD or non-SCRTD contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:
 - i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - ii. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, including failure to pay subcontractors, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
 - (5) Any other cause the purchasing manager determines to be so serious and compelling as to affect responsibility as a SCRTD contractor, including debarment by another governmental entity for any cause listed in this chapter.
 - (6) Any violation of the drug-free workplace regulations.

Attachment 4: SCRTD Goal Calculation Methodology

Agency: South Central Regional Transit District
Goal Period: .65% Fiscal Year 2023
Overall DBE Goal: .65%

Step 1: 26.45(c) Determination of Base Figure

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs (0)}}{\text{All firms ready, willing, and able (0)}} = 0\%$$

The data source or demonstrable evidence used to derive the numerator was:

- The SCRTD evaluated the NMDOT DBE System Directory for existing certified DBEs participating in the Unified Certification Program for all NAICS codes for Dona Ana County. The budget for the Anthony Transit Facility is over \$125,000. It was assumed that contractors from locations beyond Dona Ana County would not bid on this project due to the limited budget.
- Vendor information was collected for all DBE participants in Dona Ana County area.

The data source of demonstrable evidence used to derive the denominator was:

- Bureau of Labor Statistics, Quarterly Census of Employment and Wages found at <https://www.census.gov/data/tables/2016/econ/cbp/2016-combined-report.html>.
- Included all Construction of Buildings, NAICS 236, Municipalities within Dona Ana County. Due to the limited number of certified DBEs in other NAICS commodity codes, establishment data for these entities was not included in order to avoid diluting the goal calculation.

Step 2: 26.45 (d) Adjustment to Base Figure

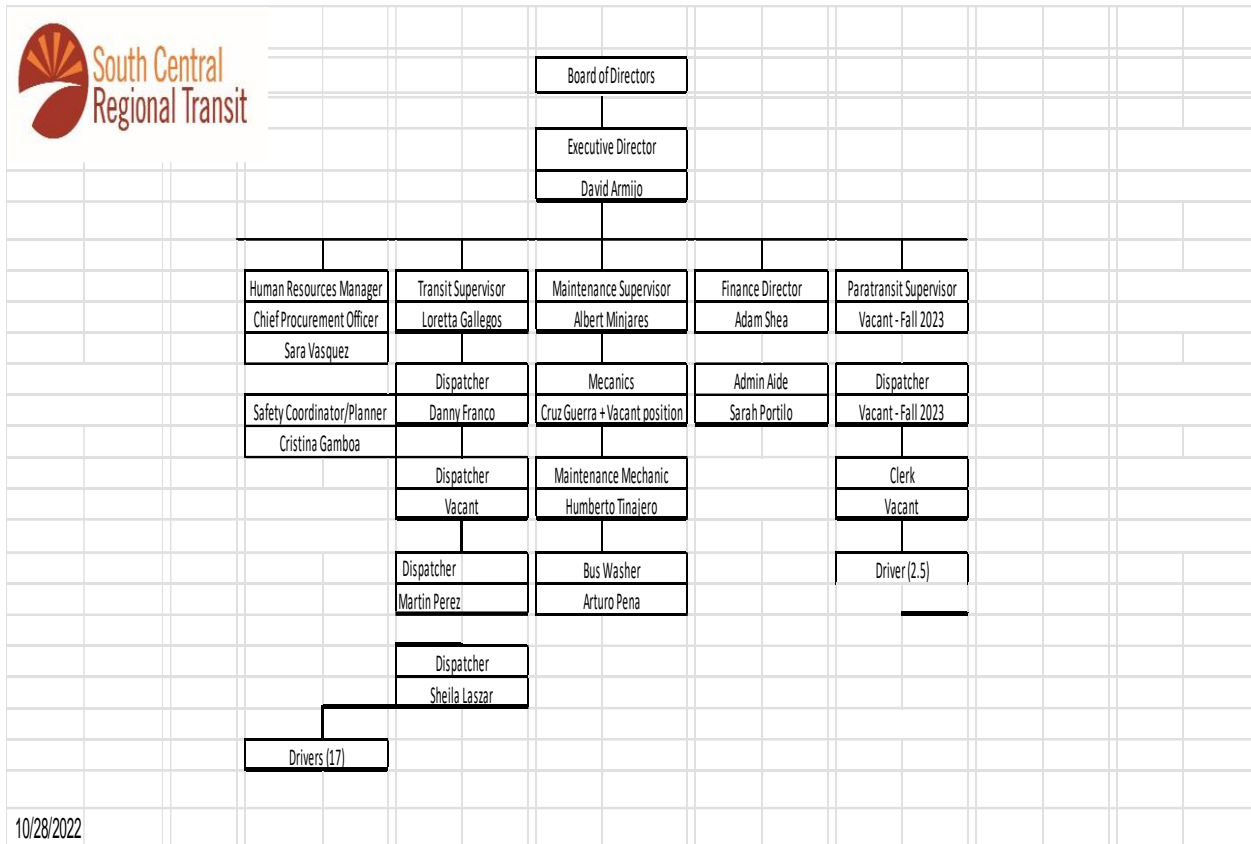
After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

The data used to determine the adjustment to the base figure was:

- There is limited historical record for the South Central Regional Transit District and therefore there is no data to adjust the base figure. We anticipate that we will be able to achieve our overall DBE goal using race-neutral means.

Based on this lack of data, adjustment will be made to match the New Mexico Department of Transportation (NMDOT) Transit and Rail Division's DBE goal for FFY 2020, 2021 and 2022 of 1.59%. NMDOT's methodology to formulate its DBE goal is presented in Attachment 6.

Attachment 5: Organizational Chart



Attachment 6: SCRTD Goal Calculation Methodology

SCRTD METHODOLOGY TO FORMULATE FFY 2023, 2024 and 2025 TRANSIT RELATED DBE GOALS

Introduction

The South Central Regional Transit District (SCRTD) prepared this document to describe the methodology it used to establish the overall Disadvantaged Business Enterprise (DBE) goal for DBE participation in FFY 2023, 2024 and 2025 federally assisted transit contracts. The goal was developed in compliance with 49 CFR Part 26, and the NMDOT relied on both the federal regulations and the guidance related to implementation of those regulations.

49 CFR 26.45 requires the establishment of an overall goal based on demonstrable evidence of the availability of ready, willing, and able DBE firms relative to all businesses who are ready, willing, and able to participate on SCRTD contracts. This process begins by determining a base figure for the relative availability of DBE firms and then, based on evidence, determining whether the base figure requires adjustments to arrive at the overall goal. The SCRTD goal setting methodology complies with these requirements.

Discussion of Methodology and Relevant Evidence

To examine DBE availability, SCRTD initially determined the relevant market area and incorporated the DBE goals of the three bus vendors that supported over \$8.8 million in capital during fiscal years 2023 through 2025. According to federal guidance, the market area is the area in which the substantial majority of the contractors and subcontractors with which SCRTD does business are located, and the area in which the substantial majority of contracting dollars are spent. In each of these respects, the public contract records of SCRTD indicate that the appropriate market area is the geographical area of the State of New Mexico. Any out-of-state contractor or subcontractor must meet the same qualifying standards and requirements as in-state firms.

SCRTD then determined the principal types of contractors that participate in transit related construction contracts and transit related service contracts. SCRTD used the following disciplines and their associated NAICS codes:

212312	Construction Sand and Gravel Mining
263220	Commercial and Institutional Building Construction
238110	Poured Concrete Foundation and Structure Contractors
238290	Other Building Equipment Contractors
238990	All Other Specialty Trade Contractors
323111	Commercial Printing (except Screen and Books)
323113	Commercial Screen Printing
424710	Petroleum Bulk Stations and Terminals

441110	New Car Dealers
441310	Automotive Parts and Accessories Stores
443142	Electronics Stores
444130	Hardware Stores
444190	Other Building Materials Dealers
447110	Gasoline Stations with Convenience Stores
453210	Office Supplies and Stationery Stores
454310	Fuel Dealers
485210	Interurban and Rural Bus Transportation
511120	Periodical Publishers
515112	Radio Stations
515120	Television Broadcasting
519130	Internet Publishing and Broadcasting and Web Search Portals
524113	Direct Life Insurance Carriers
532420	Office Machinery and Equipment Rental and Leasing
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
541110	Offices of Lawyers
541211	Offices of Certified Public Accountants
541511	Custom Computer Programming/Consulting Services
541611	Administrative Management and General Management Consulting Services
541810	Advertising Agencies
561311	Employment Placement Agencies
561621	Security Systems Services (except Locksmith)
561710	Exterminating and Pest Control Services
561990	All Other Support Services
621111	Offices of Physicians (except Mental Health Specialists)
811118	Other Automotive Mechanical and Electrical Repair and Maintenance
811212	Computer and Office Machine Repair and Maintenance
813920	Professional Organizations

As allowed by 49 CFR 26.45(c)(1), SCRTD used its DBE Directory and Census Bureau data to calculate the base percentage availability in each contractor category because that data represents the best available and demonstrable evidence of the availability of ready, willing, and able transit related DBE firms relative to all businesses in the market area ready, to participate in SCRTD transit related contracts. That data, therefore, provides the basis for a rational process, consistent with the federal guidelines.

Step One Determine the Weight of Each Type of Work by NAICS Code

SCRTD through reviewing all its projects as well as subrecipient projects was able to determine which NAICS codes were associated with the type of work performed on the project. The amount of DOT funds was tabulated and weighed according to NAICS code.

Step two Determining the Base Figure for the Relative Availability of DBE Contractors

SCR TD, through its DBE Directory, determined the number of DBE firms that perform work in the above mentioned NAICS codes. Expenditures were matched with NAICS codes that reported having at least one DBE available in that category in the New Mexico Market area. Using the Census Bureau's 2016 County Business Patterns & Non employer Statistics Combined Report, SCR TD determined the number of businesses available in the market area that perform work in the same NAICS codes as DBE's performing work in the New Mexico market area, using the CBP Establishments only. Finally, SCR TD determined the relative availability of DBE contractors using the following calculation to produce the percentage of availability:

$$\frac{\text{Number of DBE firms in market area}}{\text{Number of all firms in market area}} = \text{percent availability of DBE contractors.}$$

Step 3 Determining the Weighted Base Figure

SCR TD determined the weighted base figure for each NAICS code by multiplying the weighted figure in Step One for each NAICS code and multiplying that figure by the DBE relative availability (if a DBE was available to perform this work in New Mexico market area) for each NAICS code determined in Step 2. The sum of these multiplied figures determined the new DBE goal of **.65%**.

Overall Goal

The overall goal for DBE participation in federally assisted transit contracts is .65%. SCR TD projects that it will meet the overall goal through race-neutral measures.

Public Involvement and Information Dissemination

Pursuant to 49 CFR §26.45(g), the NMDOT Construction and Civil Rights Bureau held a Public Information Meeting in Las Cruces, New Mexico, to provide the public an opportunity to participate in the establishment of the overall DBE goal. In addition to inviting all DBE and non-DBE firms to attend, Legal Notice of the public meeting was published in the following two (2) newspapers:

Las Cruces Bulletin

The Legal Notice, invitations and e-notification informed the public that the proposed DBE goal and the rationale used to formulate the goal were available for inspection at the SCR TD office at 830 Anthony Drive, Anthony, New Mexico, for thirty (30) days following the publication date of the Legal Notice, and that the District will accept comments on the goals for forty-five (45) days following the publication date of the Legal Notice.

Goal Submission

Pursuant to 49 CFR §26.45(f), the overall goal will be submitted to FTA for review. Pursuant to 49 CFR §26.45(f)(1)(iv), while SCRTD is required to submit an overall goal to FTA only every three years, the overall goal, and the provisions of 49 CFR § 26.47(c) apply to each year during that three year period.