



City of Las Cruces®

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Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 11-142 Council District: ALL

For Meeting of January 3, 2011
(Adoption Date)

TITLE: A RESOLUTION GRANTING A WAIVER REQUESTED BY AUGUIE HENRY III FROM THE EMPLOYEE CONFLICT OF INTEREST PROVISION IN SECTION 24-377 AND THE CONTEMPORANEOUS EMPLOYMENT PROVISION IN SECTION 24-380 OF THE CITY OF LAS CRUCES MUNICIPAL CODE.

PURPOSE(S) OF ACTION: Sections 24-377 and 24-380 of the Las Cruces Municipal Code define conditions whereby it is unethical for City employees to participate in the City's procurement process. Section 24-381, however, authorizes the City Council to waive the apparent conflicting interest of such employees. The waiver is conditioned upon (1) public disclosure of the identity and financial interest of the employee, (2) the employee participation in City procurements if fair and equitable, and (3) finding that the waiver is in the best interest of the City.

Drafter and Staff Contact: Pat Degman		Department: Finance		Phone: (575) 541-2050	
Department	Signature	Phone	Department	Signature	Phone
Finance Director <i>ACTING</i>		541-2050	Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

- Section 24-1 of the Las Cruces Municipal Code defines an employee as follows: Employee means an individual drawing salary or wages from the City, whether elected or not; uncompensated individuals performing personal services for the City or any department, agency, commission, council, board or any other uncompensated individual serving as an elected official of the City.
- As the Grants Administrator for the City of Las Cruces, Mr. Henry is an employee of the City. Mr. Henry's brother, Patrick L. Henry, is the owner of Liberty General Construction.
- Mr. Henry is subject to the provisions of Section 24-377, 24-380 and 24-381 of the Las Cruces Municipal Code and must obtain a waiver from City Council to enable him to participate in the City's procurement process of services, of which his brother's company, Liberty General Construction provides as it pertains to non-federal grant funds administered by the Grants Administration Office.
- Section 10-16-13, NMSA, 1978 of the State of New Mexico statutes precludes the City from accepting a bid/proposal from a person who participates in the development of related bid/proposal specifications/requirements or evaluation criteria. As such, the

(Continue on additional sheets as required)

City may not legally accept a bid/proposal from Liberty General Construction unless Mr. Henry, City employee, refrains from any direct participation in developing specifications and/or evaluation criteria used in related City bid/proposal solicitations in goods/services from his brother's firm.

5. Mr. Henry, City employee, is also subject to all elements of the City's procurement process, conducted to provide fair and equitable treatment of all procurement participants, to maximize the value of public funds, and to provide safeguards for maintaining the procurement system of quality and integrity.
6. The City's interest in seeking Mr. Henry's participation relates to project funding from non-federal grant funds received by the City of Las Cruces, ensuring grant compliance, and limiting City liability.

SUPPORT INFORMATION:

1. Resolution/Ordinance.
2. Exhibit "A" Employee Conflict of Interest
3. Exhibit "B" City Manager Letter requesting Exemption

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the (# and Fund Name) Fund.
Does this action create any revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: (Fund #) in the amount of \$ _____ for FY _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A					

(Continue on additional sheets as required)

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OPTIONS / ALTERNATIVES:

1. Vote "Yes"; will allow Auguie Henry III, Grants Administrator to continue participating in procurement processes as relevant to non-federal grant funds received by the City.
2. Vote "No"; will not allow Auguie Henry III, Grants Administrator to participate in procurement processes relative to non-federal grant funded projects which could result in a non-compliance or liable situation for the City.
3. Vote to "Amend"; Council could amend the request or return to staff for further consideration.
4. Vote to "Table"; N/A

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION NO. 11-142.**TITLE:**

A RESOLUTION GRANTING A WAIVER REQUESTED BY AUGUIE HENRY III FROM THE EMPLOYEE CONFLICT OF INTEREST PROVISION IN SECTION 24-377 AND THE CONTEMPORANEOUS EMPLOYMENT PROVISION IN SECTION 24-380 OF THE CITY OF LAS CRUCES MUNICIPAL CODE.

The City Council is informed that:

WHEREAS, Sections 24-377 and 24-380 of the Las Cruces Municipal Code define conditions whereby it is unethical for City employees to participate in the City's procurement process; and

WHEREAS, Mr. Auguie Henry III, Grants Administrator for the City of Las Cruces, is an employee of the City as defined in Section 24-1 of the Las Cruces Municipal Code; and

WHEREAS, Mr. Patrick L. Henry, sole owner of Liberty General Construction, is the brother of Mr. Auguie Henry III; and

WHEREAS, there may be economic benefit to the City by increasing opportunities for Liberty General Construction to transact business with the City; and

WHEREAS, Mr. Auguie Henry III seeks to participate in the City's procurement process such as to enable him to review/evaluate bids submitted by Liberty General Construction, as they may pertain to non-federal grant funded projects; and

WHEREAS, the City's interest in seeking Mr. Auguie Henry's participation in City procurements relates to projects funded from non-federal grant proceeds; and

WHEREAS, Mr. Auguie Henry III, Grants Administrator has requested a waiver

from the provisions of Section 24-377 and Section 24-380 such as to enable him to participate in procurement processes for the City; and

WHEREAS, pursuant to Section 24-381 of the Las Cruces Municipal Code, the City Council may grant the waiver requested by Mr. Auguie Henry III conditioned upon (1) Mr. Auguie Henry III publicly disclosing his relationship with Mr. Patrick L. Henry, Liberty General Construction, (2) Mr. Auguie Henry III being able to participate in City non-federal procurements without actual or apparent bias or favoritism; and (3) the waiver is deemed to be in the best interests of the City; and

WHEREAS, the City's procurement process is governed by Chapter 24 of the Las Cruces Municipal Code and provides safeguards for the fair and equitable treatment of all participants of the City's procurement process, for maximizing the purchasing value of public funds and for maintaining a procurement system of quality and integrity.

NOW, THEREFORE, be it resolved by the governing body of the City of Las Cruces:

(I)

THAT, Mr. Auguie Henry III has publicly disclosed he has no ownership or managerial control with Liberty General Construction; he is able to participate in City non-federal procurements without actual or apparent bias or favoritism, and the City's best interests are served by hereby granting a waiver from the provisions of Section 24-377 and 24-380 of the Las Cruces Municipal Code as requested by Mr. Auguie Henry III.

(II)

THAT, the City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this 3rd day of January 2011 .

Mayor

ATTEST:

VOTE:

City Clerk

(SEAL)

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:
Ass't City Attorney

 City Attorney

**EMPLOYEE CONFLICT OF INTEREST AND
CONTEMPORANEOUS EMPLOYMENT**

LAS CRUCES MUNICIPAL CODE:

Sec. 24-1. Definitions.

Employee means an individual drawing salary or wages from the city, whether elected or not; any uncompensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the city; and any uncompensated individual serving as an elected official of the city.

Sec. 24-377. Employee conflict of interest.

- (a) It shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
- (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract; or
 - (2) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (b) A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

Sec. 24-380. Contemporaneous employment.

It shall be unethical for any city employee who is participating directly or indirectly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the governmental body by whom the employee is employed.

Sec. 24-381. Waivers from employee conflict of interest and contemporaneous employment.

The city council may grant a waiver from the employee conflict of interest provision in section 24-377 or the contemporaneous employment provision in section 24-380 upon making a written determination that:

- (1) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (2) The city employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- (3) The award will be in the best interests of the city.

STATE OF NEW MEXICO STATUTE:

10-16-13. Prohibited bidding.

No state agency or political subdivision of the state shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or political subdivision of this state shall exercise due diligence to ensure compliance with this section.

Date: November 22, 2010

To: Terrence Moore, City Manager

Thru: Pat Degman, Interim Finance Director

Thru: Robert Telles, Purchasing Manager

I have a position in the City of Las Cruces (City) as Grants Administrator in the Finance Department.

I am also brother to Patrick L. Henry who is owner of Liberty General Construction, a provider of construction services and listed HUD Section III business.

Because my employment responsibilities may include involvement in the purchase of construction services and/ or due to a possibility that other City departments may have need for construction services, I am requesting a waiver from the City Council regarding my procurement participation being deemed a conflict of interest pursuant to LCMC Section 24-377. The City Council may grant a waiver pursuant to LCMC Section 24-381.

I am knowledgeable of the City's Procurement Code and purchasing procedures and will abide by them as they relate to any development of specifications and requirements for construction services such as to maximize receipt of competing bids or proposals.

If successful in obtaining a waiver, I believe the Finance Department, Grants Administration Office and/or other City departments will benefit as I bring my experience and knowledge in conducting needs analysis and in developing requirements for meeting the goals of the Finance Department and/or other City departments.

As stated above, my position may require my participation in the purchase of goods/services. I believe that prohibiting my participation will compromise the capability of Finance Department, Grants Administration Office and/or other City departments' from meeting its goals. I believe my participation, as governed by the City's Procurement Code and purchasing procedures, will benefit the Finance Department, Grants Administrative Office) and/or other City departments through the purchase of goods/services that are of good quality and at a competitive cost.

Your assistance in including this request as an agenda item for City Council consideration and approval is greatly appreciated. Should you need additional information or encounter and problems, please contact me at your convenience at (575) 541-2281.

Cordially,



Auguste Henry III, M.P.A.
Grants Administrator
City of Las Cruces