

62
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 12-143

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of February 21, 2012
 (Adoption Date)

TITLE: A RESOLUTION ADOPTING AN UPDATED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR THE CITY OF LAS CRUCES.

PURPOSE(S) OF ACTION:

To adopt a new DBE program due to changes in federal regulations.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> David Dollahon	<u>Department/Section:</u> Community Development / Planning Services	<u>Phone:</u> 528-3060
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces is a recipient of federal Department of Transportation (DOT) funds, both directly and indirectly. As such, the City is required to implement and maintain a Disadvantage Business Enterprise (or DBE) Program for the City, in order to continue to receive and utilize DOT funds. Generally, the City receives direct funding from DOT for RoadRunner Transit from the Federal Transit Administration (FTA) and for the Las Cruces International Airport from the Federal Aviation Administration (FAA). Indirect funding is provided for highway construction and Metropolitan Planning Organization funds from the Federal Highway Administration (FHWA) that are received through the New Mexico Department of Transportation (NMDOT).

The updated DBE program is required because of: 1) updates to the federal regulations that were enacted in February 2011 and must be implemented locally by February 2012, and 2) due to the recent reorganization within the Operations section of the City organization (i.e. those departments under the Assistant City Manager/Chief Operating Officer).

Highlights in the updated program include:

- 1) Create a DBE page on the City's website under the Purchasing Department's page,
- 2) Implement a "Fostering Small Business" component as part of the City's procurement processes as required by the updated federal regulations,
- 3) Encourage the use of designated DBE Financial Institutions by contractors,
- 4) Develop and implement monitoring procedures to ensure that prime contractors utilize and pay DBE contractors as they have indicated on their bids to the City,

- 5) Update new DBE forms as part of the procurement process that ensures compliance with the federal regulations without overburdening the respective bidders or DBE firms,
- 6) Allow for the use of design-build/turnkey contracting that complies with the DBE requirements,
- 7) Designate Transportation Director, Lisa Murphy, as the DBE Liaison Officer for the City of Las Cruces, and
- 8) Designating the Assistant City Manager/Chief Operating Officer, Brian Denmark, as the hearing officer for DBE good faith effort determinations.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", DBE Program for the City of Las Cruces.
3. Attachment "A", Resolution 10-058.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input 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 _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input 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	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the adoption of the updated Disadvantaged Business Enterprise Program in order to continue to receive and utilize DOT funds.

2. Vote "No"; this will disapprove the adoption of the updated Disadvantaged Business Enterprise Program.
3. Vote to "Amend"; this action would come from Council direction.
4. Vote to "Table"; this action would come from Council direction.

REFERENCE INFORMATION:

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

1. N/A

RESOLUTION NO. 12-143**A RESOLUTION ADOPTING AN UPDATED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR THE CITY OF LAS CRUCES.**

The City Council is informed that:

WHEREAS, the City of Las Cruces is the recipient of federal grants from the U.S. Department of Transportation (USDOT), either directly or indirectly from the New Mexico Department of Transportation (NMDOT); and

WHEREAS, the funding generally received from the USDOT are for capital equipment and operating expenses for RoadRUNNER Transit from the Federal Transit Administration, capital improvement and maintenance grants for the Las Cruces International Airport from the Federal Aviation Administration, and highway construction and Metropolitan Planning Organization planning grants from the Federal Highway Administration that are passed through to the City from NMDOT; and

WHEREAS, the USDOT has established the Disadvantaged Business Enterprise (DBE) regulations to ensure a level playing field in the procurement of goods and services purchased using USDOT funds for those small, minority, and women-owned businesses that are formally recognized as disadvantaged businesses; and

WHEREAS, the City of Las Cruces is obligated under the DBE regulations to maintain and implement a formal DBE Program; and

WHEREAS, the City's first formally adopted DBE Program was completed in 2009 under Resolution 10-058; and

WHEREAS, due to changes in the federal regulations and the City's recent reorganization to create the Transportation Department, updates to the DBE Program are required and must be adopted by City Council resolution.

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

(I)

THAT the Disadvantaged Business Enterprise Program for the City of Las Cruces as shown in Exhibit "A", attached hereto and made a part of this Resolution, is hereby adopted.

(II)

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

DONE AND APPROVED this _____ day of _____ 2012.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

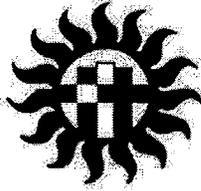
APPROVED AS TO FORM:



City Attorney

VOTE:

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



City of Las Cruces[®]
PEOPLE HELPING PEOPLE

CITY OF LAS CRUCES

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM

August 2011
Version 2.0

Record of Changes

Date

DBE Plan, Version 1.0 – adoption, Resolution 10-058	August 17, 2009
DBE Policy Statement, updated, new City Manager Signature	July 8, 2011
DBE Plan, Version 2.0 – adoption, Resolution	February 21, 2012

⁶⁹
CITY OF LAS CRUCES DBE PROGRAM
POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Las Cruces 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 of Las Cruces has received Federal financial assistance through the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). As a condition of receiving this assistance, the City of Las Cruces has signed assurances that it will comply with 49 CFR Part 26.

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

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f. To assist the development of firms that can compete successfully in the market place outside the DBE Program;
- g. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Lisa Murphy, City of Las Cruces Transportation Department Director, has been designated as the DBE Liaison Officer (DBELO). In that capacity, Ms. Murphy 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 City of Las Cruces in its financial assistance agreements with the U. S. Department of Transportation.

The City of Las Cruces has disseminated this policy statement to the City Council of Las Cruces and all of the components of the organization. Additionally, The City of Las Cruces has publicized its program objectives to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through locally published Las Cruces Bulletin, and El Diario (in Spanish) newspaper advertisements, City of Las Cruces Purchasing Department web site, and in any Invitation for Bids (IFB), Requests for Bids (RFB), or Requests for Proposals (RFP) issued by the City of Las Cruces Purchasing Department.

Robert L. Garza, City Manager

Date

Issuing Agency: City of Las Cruces, P.O. Box 20000, Las Cruces, NM 8004

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 City of Las Cruces Purchasing website at: <http://www.las-cruces.org/Departments/Financial%20Services/Services/Purchasing.aspx> or from the USDOT Civil Rights office website at: <http://www.dotcr.ost.dot.gov/asp/dbe.asp>. The numbered sections of the City of Las Cruces 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 City of Las Cruces is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Additionally, the City of Las Cruces has been and is the recipient of federal-aid highway and public transportation funds authorized in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Statute 1914; the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178, 112 Statute 107; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU), Public Law 109-59, 119 Statute 1144.

Section 26.5 Definitions

The City of Las Cruces will adopt the definitions contained in 49 CFR Part 26 for this program. Acronyms used in this policy are defined in Attachment 1.

Section 26.7 Non-Discrimination Requirements

The City of Las Cruces 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 of Las Cruces 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 Requirements⁷¹

Uniform Report of DBE Awards, Commitments, Payments: 26.11(a)

The City of Las Cruces will transmit the Uniform Report of DBE Awards or Commitments and Payments on the form required by DOT at the intervals required by the DOT operating administrations.

Reporting to DOT: 26.11(b)

The City of Las Cruces will report DBE participation to DOT as follows:

- For Federal Aviation Administration (FAA) projects, we will submit annually DOT Form 4630, as modified for use by FAA recipients.
- For Federal Transit Administration (FTA) projects, we will report DBE participation on a semi-annual basis using the Uniform Semi-Annual Report of DBE Awards or Commitments and Achievements. These reports will reflect payments actually made to DBEs on FTA assisted contracts.
- For Federal Highways Administrations (FHWA) projects, we will report DBE participation on a quarterly basis, using DOT form 4630.

Bidders List: 26.11(c)

The City of Las Cruces will utilize a bidders list through contracted services (currently BidNet: <http://www.govbids.com/scripts/nm1/public/OpenBids/viewopentitles1.asp?agency=1757&AgencyName=City+of+Las+Cruces>, consisting of information about all DBE and non-DBE firms (contractors and subcontractors) 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 City of Las Cruces will collect this information in the following ways:

We will use various methods to maintain its bidders list and calculate its overall goal. We use the current list provided online by NMDOT at www.nmshtd.state.nm.us/main.asp?secid=11175. To derive the total number of businesses in Doña Ana County and New Mexico, we use the U.S. Census Bureau's most recent year's Economic Census Summary Statistics for New Mexico (<http://www.census.gov/eos/www/naics>) or the most recent available information. When it is appropriate, estimates from the Census Bureau's American Community Survey (ACS) program will be used for more up-to-date information (see <http://www.census.gov/acs/www/>). The relative availability of DBE's within the city is expressed as a percentage of the Dona Ana County or other New Mexico DBEs registered with NMDOT divided by the number of businesses registered in the county or service area with New Mexico. This ratio is used to determine the City's overall DBE goal. The City will, to the best of its ability, evaluate the capacity of a business to perform the work on each project when estimating DBE goals. Overall annual goals will be calculated separately for FHWA, FAA and FTA program area.

The City of Las Cruces will require prospective bidders⁷² on DBE-program eligible projects to submit forms, examples shown in Attachment 2 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 City of Las Cruces has signed the following assurances or will sign the most current assurance as changed by DOT, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The City of Las Cruces 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 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's DBE Program, as required by 49 CFR Part 26 and as approved by the 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 Las Cruces 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 City of Las Cruces will ensure that the following clause is placed in every DOT-assisted contract and each subcontract the prime contractor signs with each 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 remedy as the City deems appropriate.

Recipient Exceptions or Waivers 26.15

The City of Las Cruces, as a federal DOT-assisted recipient, has not applied for nor received and exceptions or waivers under 49 CFR Part 26.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Las Cruces will continue to carry out this program until all funds from DOT-financial assistance have been expended. The City of Las Cruces will provide updates to the applicable DOT operating 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)

We have designated the following individual as the City's DBE Liaison Officer:

Lisa Murphy
Transportation Department Director
PO Box 20000
Las Cruces NM 88004
(575) 528-3060
lmurphy@las-cruces.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Las Cruces complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City of Las Cruces City Manager (currently Robert L. Garza) 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 the City of Las Cruces Purchasing Department and operating departmental (Airport, Public Works, Transit) staff. The Purchasing Department currently has no personnel dedicated solely to the DBE program. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Analyzes City of Las Cruces's progress toward attainment and identifies ways to improve progress.
5. Advises the City Manager, City Council, and the City program administrator(s) responsible for the DOT-funded project on DBE matters and achievement.
6. Determines contractor/bidder compliance with good faith efforts, where applicable.
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.
9. Works with all departments to set overall annual goals.
10. Updates the DBE policy references as necessary.

In support of the DBELO, the City of Las Cruces Purchasing Department staff is responsible for the following:

1. Maintains the DBE policy and support material on the Department's webpage.
2. In coordination with the administer program departments, 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.)
3. Provides DBEs with information in submitting bids, obtaining bonding and insurance.
4. Includes DBE necessary clauses in the IFB, RFB, RFP, and contracts in applicable DOT-funded projects.
5. Plans and participates in DBE training seminars.
6. Provides information on the Uniform Certification Process in New Mexico.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Las Cruces 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 the institutions.

The City of Las Cruces uses the Federal Reserve Board's listing of quarterly data on banks that participate in the Department of Treasury's Minority Bank Deposit Program to fulfill this requirement: <http://www.fms.treas.gov/mbdp/index.html>.

Information on the availability of such institutions can also be obtained from the DBE Liaison Officer or the City of Las Cruces' Purchasing Department website: <http://www.las-cruces.org/Departments/Financial%20Services/Services/Purchasing.aspx>.

Section 26.29 Prompt Payment Mechanisms

Contract Requirements:

The City of Las Cruces will include the following clause in each DOT-assisted prime contract:

The City shall pay all prime contractors or design consultants and other consultants (henceforth referred to as "prime contractors" collectively) in accordance with the NM Prompt Payment Act (New Mexico Statutes Annotated, 1978 Annotated (henceforth referenced as "NMSA", 57-28-1 et. seq.) for their respective contract amount for undisputed, acceptable work within twenty-one (21) calendar days. The prime contractors shall pay all subcontractors or sub-consultants (henceforth referred to as "subcontractors" collectively) their respective subcontract amount for undisputed, acceptable work within seven (7) calendar days from the receipt of each payment the prime contract or consultant receives from the City of Las Cruces.

The City shall not retain any portion of the prime contract from the prime contractor. The prime contractor-acknowledges that the City will not allow retainage to be retained by the prime contractor for any subcontractor. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of Las Cruces.

This clause applies to both DBE and non-DBE subcontracts.

Additional Mechanisms:

The City of Las Cruces will use the following requirements to ensure prompt payment:

- a) Require that prime contractors include in their subcontracts language providing that prime and subcontractors will use appropriate alternative dispute resolution mechanism to resolve payment disputes, subject to New Mexico Public Works Mediation Act, NMSA 1978, Section 13-4C-1 et. seq.
- b) Require that contractors will not be reimbursed for work performed by subcontractors unless and until the prime contractor has a signed certified statement from each subcontractor for each payment request beyond the first payment and after all subsequent payment requests, including final payment requests, submitted to the City.
- c) If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City of Las Cruces 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 City 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 action as appropriate, at the discretion of the City.

Monitoring Payments to DBEs

The City of Las Cruces 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 City of Las Cruces and/or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The City of Las Cruces will keep a running tally of actual payments to DBE's for work committed to them at the time of contract award.

The City of Las Cruces 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.

As part of the City's payment approval process, the prime contractor will be required to submit a form certifying that the subcontractors have been paid for each payment request beyond the first payment (i.e. with the 2nd pay request, the prime contractor will provide a certification that the subcontractors, including DBE's have been paid from the 1st pay request). Additionally, the contractors will be required to submit the DBE reporting form with each pay request (See Attachment 4).

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), approved by a City Council Resolution, 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 using the most specific North American Industrial Classification System (NAICS) Code. The directory is revised on a continuous basis and is maintained by the NMDOT.

The City of Las Cruces will utilize the directory of certified firms capable of bidding on the City's USDOT funded projects. This action will enable the City to take advantage of a larger pool of available certified DBE's in various specialties from throughout the state in meeting and/or exceeding the established annual DBE goal.

The most current directory will be available through the NMDOT website:

<http://www.nmshtd.state.nm.us/main.asp?secid=11175>.

Section 26.33 Over-concentration

The City of Las Cruces has not identified that over-concentration exists in the types of work that DBEs perform. The City of Las Cruces has not identified any fields in which non-DBEs are unduly burdened that could be assisted by additional measures or requirements to assist DBEs to expand their efforts to assist any unduly burdensome work. The City of Las Cruces will vary our contract goals, to the extent consistent with 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

Should, in the future that an overconcentration of DBEs by type of work is determined to exist the City will amend this Plan and obtain approval from the concerned DOT operating agency, and implement such efforts as part of this Program.

Section 26.35 Business Development Programs

The City of Las Cruces has not been directed by any DOT operating administration to nor has the City established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The City of Las Cruces will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The City of Las Cruces 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 26.107.
2. The City of Las Cruces will consider similar action under our own legal authority, including responsibility determinations in future contracts. Attachment 4 lists the

regulation, provisions, and contract remedies⁷⁷ available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

3. The City of Las Cruces will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award or subsequently (i.e. as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This will, include at a minimum, a written certification by the City, that the City has reviewed contracting records and monitored work sites for this purpose (see Attachment 4). This monitoring may be conducted in conjunction with monitoring of contract performance for other purposes (e.g. close-out reviews for a contract, verification of certified payrolls, wage interviews for Davis-Bacon compliance).
4. The City of Las Cruces 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 (See Attachment 4).

As part of our enforcement efforts, the City of Las Cruces shall undertake the following:

- a) Provide notice to the contractors that they have been awarded a contract, along with an acknowledgment that their listed subcontractors were to be used, including both DBE and non-DBE subcontractors.
- b) Subcontractors will be provided notice that the contract has been awarded to the prime contractor and that they should anticipate communication from the prime contractor and the City will indicate an anticipated Notice to Proceed date for the contract.
- c) In accordance with New Mexico statutes (NMSA 13-4, 1978 as annotated) in which the property owner, i.e. the City of Las Cruces, substitution of subcontractor cannot be done without owner approval. The City shall strongly encourage all major subcontractors and/or DBE's, either in person or via teleconference, have at least one representative at any pre-construction or pre-work meetings between the City and the prime contractor, including requiring that all present sign-in at the meeting.
- d) Develop and utilize a check list for all construction related contracts that ensure proper Davis-Bacon reports are submitted by all contractors, and verify those weekly payroll reports submitted confirm to the list of provided subcontractors.
- e) Require a certification by the prime contractor and verification by the subcontractor that work performed was performed by the respective firm.
- f) Develop and utilize a performance log and certification form that the City has reviewed the contracting records and monitored the applicable work sites to ensure that both contracts were provided to any DBE-subcontracting firm and that work was actually performed by those listed subcontractors. (See Attachment 4).

Section 26.39 Fostering Small Business Participation

Without compromising mandated measures to maximize competition pursuant to federal regulations, the City will make every effort, as part of our DBE program, 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.

As part of this program element, the City has identified the following strategies:

- a) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- b) Without compromising the prime contractors right to establish project means and methods, on prime contracts not having DBE contract goals, encouraging the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- c) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts. Efforts such as procuring and using pricing agreements for construction trades for use in contracts not to exceed \$25,000 will be performed.
- d) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Las Cruces does not use set-asides or quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The City 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 potential contracting opportunities and the relative availability of ready, willing, and able DBE's to all businesses ready, willing, and able to participate in the City of Las Cruces DOT-assisted contracting opportunities. Generally, the City will rely on the use of the most current Certified DBE listing and the U.S. Census Bureau's Economic Census for the State of New Mexico. The DBE and Census listing will be adjusted or modified based on the most current and up-to-date bidders list that the City maintains. The second step is to review relevant evidence and historical data available and determine if adjustments to the base figure are needed. This will consist of a review of past attainment of overall DBE goals achieved within the last three fiscal years, taking the median of those goals (if any), and averaging it with the base goal to establish the overall goal. If there are no accomplishments for the past three fiscal years or there is less than three year's worth of data, then no adjustment will be made to the original base figure.

The City shall maintain a separate listing and documentation on each goal setting methodology. The FTA goal methodology will be established every three years starting with FFY2011 funds. Currently FHWA goals are established by the NMDOT. The City of Las Cruces Airport receives FAA funding and independently has its goals calculated annually; however this policy will also guide the implementation of FAA goals.

The City of Las Cruces will submit its overall goals to DOT on August 1 of each year or as determined by the operating administration. Before establishing the overall goal each year, City of Las Cruces 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 DBE's, and the City of Las Cruces' efforts to establish a level playing field for the participation of DBE's.

Following this consultation, the City of Las Cruces 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 City of Las Cruces offices for 30 days following the date of the notice, and informing the public that the City of Las Cruces 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 DBELO at the contact information noted in 26.25 above.

The City of Las Cruces will begin using our overall ⁸⁰ 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 City of Las Cruces will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Las Cruces 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.

The City shall require that TVMs must provide a copy of their FTA-approved goal setting documentation/letter as part of their bid submission to the City.

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

The City of Las Cruces will meet the maximum feasible portion of its overall goal by using race-neutral means facilitating DBE participation. The City of Las Cruces uses the following race-neutral means to increase DBE participation:

- Provides information on City of Las Cruces 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.
- On 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.

The City of Las Cruces will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

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

The City of Las Cruces will use contract goals to meet any portion of the overall goal the City 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 City of Las Cruces 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 City will express our contract goals as a percentage of the federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts ProceduresDemonstration of good faith efforts (26.53(a) & (c))

When the City has established a Contract Goal, 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 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 responsive.

The City of Las Cruces 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 City shall require that the bidder/offeror must present the information required by items 1. through 6. of this Section, listed immediately below, as part of their submission under sealed bid procedures or with initial proposals or as otherwise outlined within the request for bid/proposal documents, as a matter of responsiveness.

Each solicitation for which a contract goal has been established, the award of the contract will be conditioned on meeting the requirements of the entire Section 26.53 and 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 contractors commitment, and;

6. If the contract goal is not met, evidence of⁸² good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) working days of being informed by the City of Las Cruces' DBELO 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: Brian Denmark, Assistant City Manager/Chief Operating Officer, P.O. Box 20000, Las Cruces, NM 88004, phone: 575.541.2271. fax: 575.541.2077, e-mail: bdenmark@las-cruces.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 so. The City of Las Cruces 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.

Design-Build/Turnkey Contracting

Should the City establish a "design-build" or "turnkey" contracting situation, in which we awards a master contract to a contractor, who in turn lets subsequent subcontractors for the work of the project, the City may establish a goal for the project. The master contractor shall then establish contract goals, as appropriate, for the subcontracts that it lets. The City shall maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the applicable federal regulations.

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

The City will require that a prime contractor not terminate a DBE subcontractor listed in response to this section (or an approved substitute DBE firm) without the City's prior written consent. 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 with another DBE firm.

The City may provide such written consent only at its discretion for reasons stated in the City's 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:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- 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;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- The City determines that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides to both the prime contractor and the City written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that the City determines that 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 its 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, and the reason for the request.

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

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

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the City will require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original 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 the City has established for the procurement.

The City will include in each prime contract a provision for appropriate administrative remedies as afforded under City ordinance or written policy, and/or state or federal law that the City will invoke if the prime contractor fails to comply with the requirements of this section.

The City will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the City will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Section 26.55 Counting DBE Participation

The City of Las Cruces will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The City of Las Cruces will not count participation of a DBE subcontract 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.

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 City of Las Cruces 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 City of Las Cruces to be qualified for this program.

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:

Office of Equal Opportunity Programs
Disadvantaged Business Enterprise Program
New Mexico Department of Transportation
Aspen Plaza
1596 Pacheco, Suite 107
Santa Fe, NM 87505
Phone: (505) 827-1774 or (800) 544-0936
Fax: (505)827-1779

Website: <http://www.nmshtd.state.nm.us/main.asp?secid=11175>

The NMUCP certification application form and annual personal net worth declaration form, and documentation requirements may also be downloaded as a courtesy from the City of Las Cruces' Purchasing Section website at: <http://www.las-cruces.org/Departments/Financial%20Services/Services/Purchasing.aspx>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

As noted in Section 26.61 – 26.73 above, the City of Las Cruces 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 City of Las Cruces and other recipients to ensure that the NMUCP has sufficient resources and expertise to carry out the requirements of this part. The City of Las Cruces 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).

Section 26.83 Procedures for Certification Decisions

Re-certifications 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 insure compliance with the standards of Subpart E of Part 26. The NMUCP staff may a certification review at least every three years to ensure there have not been any changes in the bidder' DBE status. The NMUCP shall establish a review schedule in accordance with 49 CFR Part 26, should the NMUCP adopt a certification review process.

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

Each DBE is required to inform the NMUCP 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(j). [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).

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 26.87¹⁰⁹(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: <http://www.nmshtd.state.nm.us/main.asp?secid=11175>.

Section 26.85 Interstate Certification

The NMUCP shall follow the requirements for interstate certification in accordance with 49 CFR Part 26.85 and should be contacted at the information listed under 26.61 – 27.73 above.

Section 26.86 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, 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 the NMUCP's denial of certification the USDOT under 49 CFR Part 26.89.

Section 26.87 Removal of a DBE's Eligibility

In the event the NMUCP proposes to remove a DBE's certification, the City of Las Cruces will follow procedures consistent with 26.87. Federal regulations in 49 CFR Part 26 (see 26.1 for a web link to this) sets 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 an 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 already 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

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 at:
<http://www.dotcr.ost.dot.gov/asp/dbe.asp>.

Section 26.91 Required actions by the City following DOT Certification Appeals decisions

The City of Las Cruces 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 26.107 Enforcement Actions that apply to DBE Firms

Any firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the DOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

If any firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the DOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under those paragraphs listed immediately above of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient (i.e. NMUCP). Such certification does not preclude the DOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

The DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation

Availability of records. (1) In responding to requests for information concerning any aspect of the DBE program, the DOT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a) and the City complies with provisions of the New Mexico Public Records Act. The DOT and the City may make available to the public any information concerning the DBE program release of which is not prohibited by Federal, state, or local law.

Notwithstanding any provision of Federal or state law, the City shall not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the City must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

Confidentiality of information on complainants. Notwithstanding the provisions of the paragraphs under *Availability of records*, of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the

complainant must be advised for the purpose of ⁹⁰waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

Cooperation. All participants in the DOT's DBE program (including, but not limited to, recipients (the City), 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 contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Intimidation and retaliation. The City, contractor, or any other participant in the program, shall 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. Any violation of this prohibition shall render the party/person noncompliant with this part.

GOAL SETTING – METHODOLOGY & REPORTING

The City of Las Cruces shall establish goal setting process for each operating administration (FHWA, FTA, and FAA) as required by the DOT's process and schedules. Each goal setting methodology will be documented and advertised as required by federal regulations. A change in goal shall not require an update to this Plan.

The City shall maintain a summary listing of goals established and accomplishments met as a separate document of this Plan.

ATTACHMENTS⁹¹

- Attachment 1 Acronyms used in this policy
- Attachment 2 Race Neutral & Race Conscious Forms
- Attachment 3 City of Las Cruces Organizational Chart
- Attachment 4 Monthly Reporting form
- Attachment 5 City of Las Cruces remedies for contractors failure to comply

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 21 st Century
TVM	- Transit Vehicle Manufacturer
USDOT	- United States Department of Transportation

Attachment 2
City of Las Cruces DBE Program Forms

84
CITY AND FEDERAL CLAUSES AND CERTIFICATIONS
DISADVANTAGED BUSINESS ENTERPRISE NOTICE

Disadvantage Business Enterprise Goal – Race Neutral

The Federal Department of Transportation has implemented a Disadvantaged Business Enterprise (DBE) program mandate and the City has developed its own DBE program and has established a DBE goal for fiscal year 20__ of ____% for this Federal _____ Administration-funded project(s). Further information about what this program entails and its requirements can be found via the following link: <http://www.dotcr.ost.dot.gov/asp/dbe.asp>. It shall be the responsibility of the awarded respondent to adhere and administer the relevant requirements of this program. DBE program information is available by request through the Purchasing Office as outlined elsewhere within this request for bid/proposal.

DBE participation in this procurement may be in the form of a prime contract, subcontract, joint venture, or another arrangement that qualifies under 49 CFR Sections 26.55, "How is DBE participation counted toward goals?"

Bidders List

The City of Las Cruces, New Mexico has adopted by Letter of Agreement the New Mexico State Department of Transportation's (NMDOT) Certification Procedures and DBE Directory. The DBE Directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is available from the NMSHTD.

85
NOTICE TO CONTRACTORS

THIS FORM IS A MANDATORY SUBMITTAL WITH BID/PROPOSAL

**CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE NEUTRAL**

FORM: RN- 1 (DBE Utilization)

Rev: December 31, 2011

RFB#: _____

Project

Name:

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.

Prime Contractor: _____

Address _____

City, State, Zip _____

State Registration No. _____ Contact E-mail: _____

Phone No. _____ Fax No. _____ +

By: _____
Signature

Date

Printed Name

Title

City of Las Cruces
STATEMENT REGARDING DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

This project, _____ (CLC Bid Number 11-12-xxx), is subject to a goal established under the City of Las Cruces and/or New Mexico Department of Transportation DBE Program(s).

DISADVANTAGED BUSINESS ENTERPRISE NOTICE

The Federal Department of Transportation has implemented a Disadvantaged Business Enterprise (DBE) program mandate and the City has developed its own DBE program and has established Race-Conscious DBE goals (or Contract Goal) for fiscal year 2012 of _____% for this Federal _____ Administration-funded project(s). Further information about what this program entails and its requirements can be found via the following link: <http://www.dotcr.ost.dot.gov/asp/dbe.asp>. It shall be the responsibility of the awarded respondent to adhere and administer the relevant requirements of this program. DBE program information is available by request through the Purchasing Office as outlined elsewhere within this request for bid/proposal.

DBE participation in this procurement may be in the form of a prime contract, subcontract, joint venture, or another arrangement that qualifies under 49 CFR Sections 26.55, "How is DBE participation counted toward goals?" .

Bidders List

The City of Las Cruces, New Mexico has adopted by Letter of Agreement the New Mexico State Department of Transportation's (NMDOT) Certification Procedures and DBE Directory. The DBE Directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is available from the NMDOT.

Good Faith Efforts

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 City of Las Cruces, New Mexico, 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 conditional upon satisfying the requirement of this bid specification. These requirements apply to all bidders/proposers, including those who qualify as a DBE. The bidders/proposers 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.

Policy on Contract Clauses Under 49 CFR Part 26

The bidder/proposer will be required to submit/provide the following information:

(1) Assurances as to whether or not they are able to meet the established Contract Goal, including written documentation of the bidder's/proposer's commitment to use a DBE Subcontractor(s) whose participation it submits to meet the contract goal (**See Mandatory Form RC-1**);

- (2) As applicable, the names and addresses of ⁹⁷DBE firms that will participate in the contract; a description of the work that each DBE firm will perform; and dollar amount of each DBE firm's participation (See Forms RC-2A and RC-2B);
- (3) Written confirmation from the DBE that it is participating in the contracts provided in the commitment made under (1) listed above (See Form RC-4); and
- (4) If the contract goal is not met, evidence of good faith efforts (See Form RC-3).

The City of Las Cruces, New Mexico treats bidders/proposers compliance with good faith effort requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require bidders/proposers to submit certain mandatory forms with their bid/proposal.

The DBE Forms contained at the end of this Request for Proposal need to be completed by all proposers, as applicable, to the instructions provided on each form or listed herein. Failure to submit the applicable forms at the time of bid/proposal or other required deadline will constitute "Unresponsive" and disqualify the proposer from consideration by the City of Las Cruces.

The forms following this page are:

<u>FORM:</u>	<u># of Pages:</u>	<u>Submittal time:</u>
RC-1	2	Must be submitted by all bidders with bid
RC-2A	1-duplicate as necessary	Must be submitted by apparent low bidder after bids have been tabulated or as requested of specific bidders and within 5 business days of the bid opening or otherwise directed by the City of Las Cruces Purchasing Office
RC-2B	1-duplicate as necessary	Must be submitted by apparent low bidder after bids have been tabulated or as requested of specific bidders and within 5 business days of the bid opening or otherwise directed by the City of Las Cruces Purchasing Office
RC-3	1-duplicate as necessary	Must be submitted by apparent low bidder after bids have been tabulated or as requested of specific bidders and within 5 business days of the bid opening or otherwise directed by the City of Las Cruces Purchasing Office
RC-4	1-duplicate as necessary	Must be submitted by apparent low bidder after bids have been tabulated or as requested of specific bidders and within 5 business days of the bid opening or otherwise directed by the City of Las Cruces Purchasing Office

NOTICE TO CONTRACTORS
THIS FORM IS A MANDATORY SUBMITTAL WITH BID/PROPOSAL

CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES

FORM: RC-1

Rev.: February 1, 2012

Page 1 of 2

RFB#: xx-xx-xxx Project Name: _____

FAILURE TO COMPLY WITH THESE REQUIREMENTS SHALL RENDER A BID/PROPOSAL NON-RESPONSIVE AND THE BID/PROPOSAL SHALL BE REJECTED.

This project is subject to race-conscious measures. The established DBE goal for this project is ____%. At the time the bid is submitted to the City, **ALL BIDDERS** as indicated below, shall establish whether they can or cannot meet the established DBE Goal and shall complete, sign and submit Forms: RC-1 (this form, both pages).

Within five (5) working days of notification of apparent low bidder at 4:00 PM, the **APPARENT LOW BIDDER(S)** shall submit: 1) Forms RC-2A and RC-2B, indicating the subcontractors/suppliers, as applicable, that they will use if awarded the project. Each Bidder is responsible for confirming that each DBE it intends to utilize is currently certified. To do so, Bidders should confirm the DBE firm's status by accessing the NMDOT DBE Directory at <http://nmdot.dbesystem.com>. Any questions about accessing the Directory or properly completing the forms can be addressed to the City's Purchasing Department at 575-541-2525.

Further, within five (5) working days of notification of apparent low bidder at 4:00 PM, the **APPARENT LOW BIDDER(S)** shall submit: 1) Written confirmation from each DBE of its intent to participate in the contract Form RC-4. **OR** 2) If the bidder cannot meet the established DBE goal, the bidder shall submit documentation evidencing its "Good Faith Efforts" to obtain DBE participation and must include Form RC-3 which lists all DBE firm(s) contacted, along with all other supporting documentation. **This documentation shall be submitted to the City of Las Cruces Purchasing Department located at City Hall, 700 N. Main St., Room 3134, Las Cruces, NM 88001.**

The Selected DBE Program Provisions Disadvantaged Business Participation in USDOT Assisted Contracts provides a detailed listing of the types of actions that the City of Las Cruces will consider as evidence of a Bidder's "Good Faith Efforts" to obtain DBE participation. At a minimum and in addition to Form(s) RC-3, the Bidder shall provide evidence that it solicited through all reasonable and available means the interest of all certified DBE firms that have the capability to perform the work on the contract and determined with certainty whether DBE firms were interested by taking appropriate steps to follow up on initial solicitations. Evidence shall include, but is not limited to, copies of newspaper advertisements, fax logs, telephone logs, or other means utilized to solicit and follow up with the DBE firms. If the City's DBE Liaison Officer determines that the apparent low bidder has failed to provide adequate evidence of "Good Faith Efforts," the City will notify the apparent low bidder of that determination and provide the apparent low bidder with the opportunity to request administrative reconsideration of that determination pursuant to 49 CFR 26.53(b) and the City of Las Cruces DBE Program.

NOTICE TO CONTRACTORS

THIS FORM IS A MANDATORY SUBMITTAL WITH BID/PROPOSAL

CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES

FORM: RC-1

Rev.: February 1, 2012

Page 2 of 2

RFB#: xx-xx-xxx Project Name: _____

FAILURE TO COMPLY WITH THESE REQUIREMENTS SHALL RENDER A BID NON-RESPONSIVE AND THE BID SHALL BE REJECTED.

In accordance with 49 CFR Part 26, the City's DBE Program, and the applicable Special Provisions and/or Certifications, the bidder shall below:

Check **A. or B. and C.** as applicable:

- A. _____ Assures to meet or exceed the established DBE goal.
- B. _____ Cannot meet the established DBE goal, but assures to submit "Good Faith Efforts" documentation in accordance with the guidelines established above.
- C. _____ Is a certified DBE contractor and shall list itself and any other DBE subcontractor(s) on Forms RC-2A & RC-2B.

I will abide by the DBE Goal set for this project and hereby assure to submit the names, if any, of the DBE Firms that will participate in this project. Substitution(s) of DBE firms and/or subcontractors **IS PROHIBITED** without prior submission of written justification to the City of Las Cruces for approval. I understand that failure to meet the goal may result in Liquidated Damages for the difference between the DBE goal and the actual DBE participation achieved.

This statement is my assurance that _____ (Name of firm) agrees to comply with the requirements of 49 CFR Part 26, as amended, and the City of Las Cruces and/or NM Department of Transportation's Disadvantaged Business Enterprise Program and all the requirements contained therein.

Date

Signature of Company Official

100
NOTICE TO CONTRACTORS

THIS FORM IS A MANDATORY SUBMITTAL FOR APPARENT LOW BIDDER OR AS REQUESTED BY THE CITY OF LAS CRUCES – DUE WITHIN FIVE WORKING DAYS FROM NOTIFICATION OF APPARENT LOW BIDDER

**CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES**

FORM: RC- 2A

Rev: February 1, 2012

Duplicate Page as necessary

RFB#: xx-xx-xxx Project Name: _____

This form is only to be completed by the Prime Contractor/Proposer and is to list all subcontractors/suppliers for this bid/proposal. **Please provide only one copy of this form per bid/proposal, but provided duplicate pages (preferably numbered as 1 of 2, 2 of 2, etc.) until all subcontractors and/or suppliers are listed.**

Bidder's Questionnaire	
Prime Contractor:	
Address:	
City, State:	
Federal Fiscal Year:	

In accordance with Section 26.11 Record Keeping Requirements – This form shall be completed by each firm for all subcontractors/suppliers quoting on the project as indicated above.

Name of Subcontractor/ Supplier	Address	DBE Status (check as applicable)	Year Firm Established	Type(s) of work	Annual Gross Receipts (check as applicable)
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> Non DBE			<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1 million-\$5 million <input type="checkbox"/> \$5 million and above

101
NOTICE TO CONTRACTORS

THIS FORM IS A MANDATORY SUBMITTAL FOR APPARENT LOW BIDDER OR AS REQUESTED BY THE CITY OF LAS CRUCES – DUE WITHIN FIVE WORKING DAYS FROM NOTIFICATION OF APPARENT LOW BIDDER
CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES

FORM: RC-2B

Rev.: February 1, 2012

Duplicate Page as necessary

RFB#: xx-xx-xxx Project Name: _____

Name of Prime Contractor: _____

TYPE OR PRINT LEGIBLY

Name of DBE	DBE Address	Description of Work	Proposed Amount
Total DBE Participation			\$

1. Contractor's DBE Liaison Officer: _____
2. Total Amount of the Bid: \$ _____
3. * DBE Participation Percentage : _____ (i.e. % of line 2 above)

* If the contract goal is not met, evidence of "Good Faith Efforts" must be provided.

The undersigned affirms that he/she is an authorized representative of Prime Contractor listed above and further certifies that the above DBE(s) was/were contacted and said DBE(s) are ready, willing, and able to participate in the project's completion. That the making of a material misrepresentation of fact is grounds for disqualification.

 Signature of Authorized Representative Printed Name of Authorized Representative

Subscribed and sworn to before me this _____ day of _____, 20____.

County of _____ }
 State of New Mexico }

Notary Seal

My commission expires: _____, Notary Public

NOTICE TO CONTRACTORS
THIS FORM IS A MANDATORY SUBMITTAL FOR APPARENT LOW BIDDER OR AS
REQUESTED BY THE CITY OF LAS CRUCES –
DUE WITHIN FIVE WORKING DAYS FROM NOTIFICATION OF APPARENT LOW BIDDER

CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES

Schedule & Certification of DBE Unavailability

FORM: RC-3

Rev.: February 1, 2012

Duplicate Page as necessary

RFB#: xx-xx-xxx Project Name: _____

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 affirms that he/she is an authorized representative of the Prime Contractor Listed above and further certifies that the above DBE(s) was/were contacted, in good faith, and said DBE(s) was/were unable to submit an acceptable responsive bid. That the making of a material misrepresentation of fact is grounds for disqualification.

 Signature of Authorized Representative Printed Name of Authorized Representative

Subscribed and sworn to before me this _____ day of _____, 20____.

County of _____ }
 }
 State of New Mexico }

Notary Seal

My commission expires: _____

 Notary Public

103
NOTICE TO CONTRACTORS/SUBCONTRACTORS
THIS FORM IS A MANDATORY SUBMITTAL FOR APPARENT LOW BIDDER OR AS
REQUESTED BY THE CITY OF LAS CRUCES –
DUE WITHIN FIVE WORKING DAYS FROM NOTIFICATION OF APPARENT LOW BIDDER

CITY OF LAS CRUCES
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
RACE-CONSCIOUS/CONTRACT GOAL MEASURES

DBE Participation Verification

FORM: RC- 4

Rev. February 1, 2012

Duplicate Page as necessary

RFB#: xx-xx-xxx Project Name: _____

Name of Prime Contractor: _____

Name of DBE Firm:	
Address:	
City, State, Zip:	
Telephone:	

Line #	Item Description	Amount
TOTAL:		

*
 I affirm that I am an authorized representative of DBE Firm listed above. Further, I affirm my participation in the contract for the Prime Contractor listed above

 Signature of Authorized DBE Representative

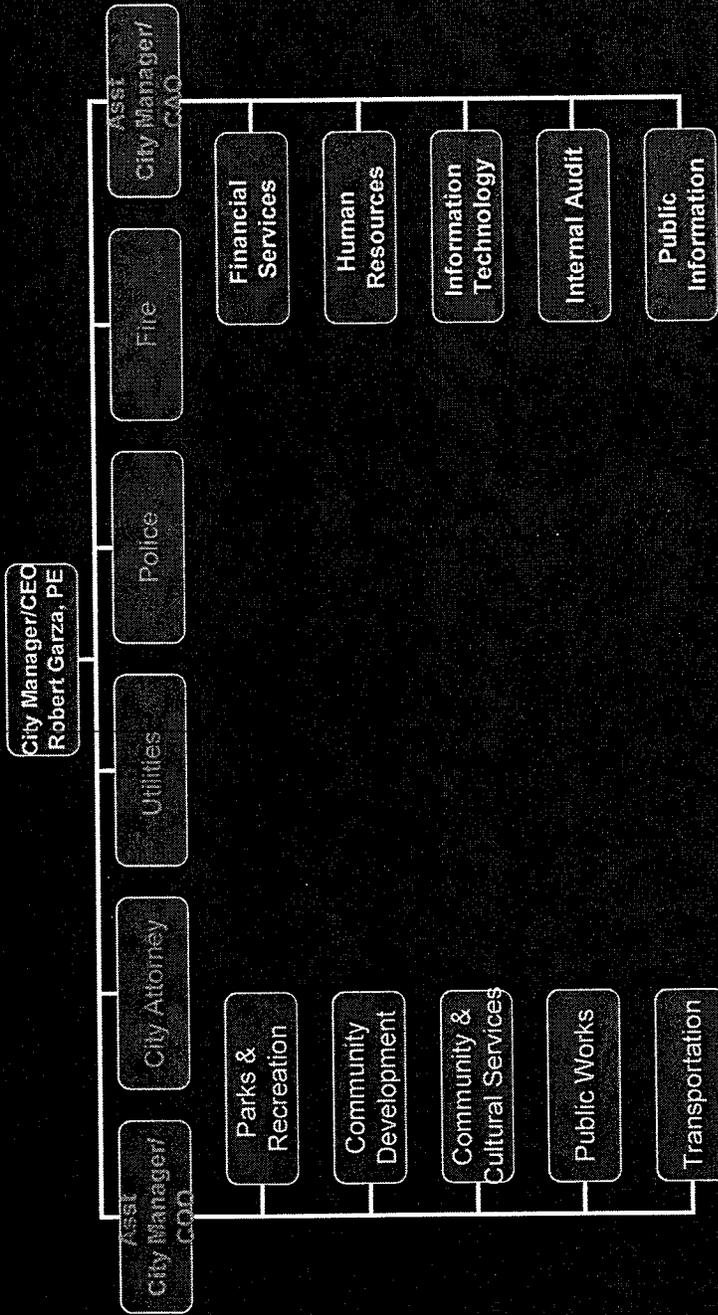
 Date

 Printed Name of Authorized DBE Representative

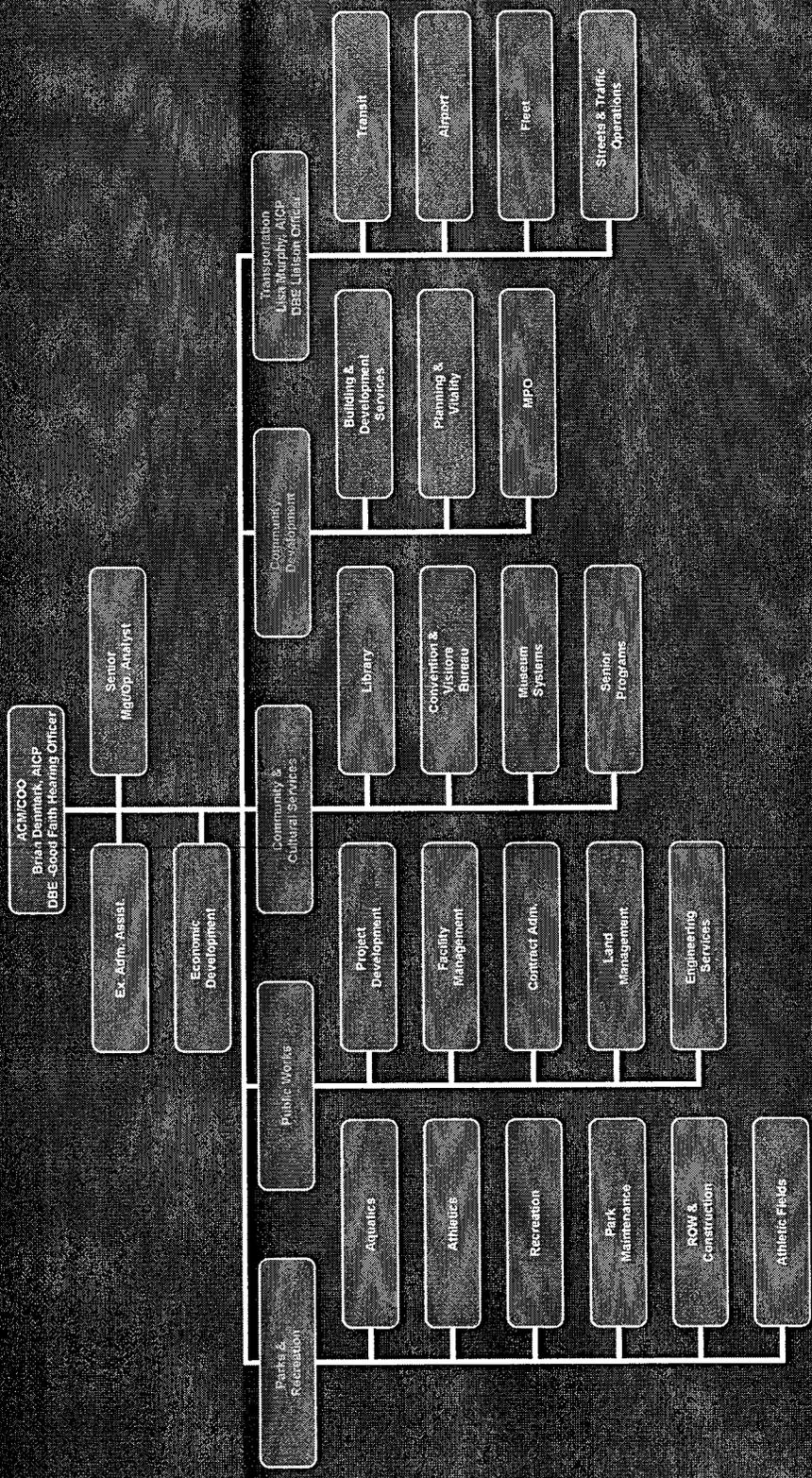
Duplicate form for 1) each DBE participating in the contract, or 2) if needed for more line items being provided by a single DBE firm.

Attachment 3 Organizational Chart

City of Las Cruces



City of Las Cruces Operations



Attachment 5¹⁰⁸
City of Las Cruces
Procurement Code, Section 24-256
Remedies for Contractors Failure to Comply

Sec. 24-256. Authority to debar

(a) The purchasing manager, after consulting with the city 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 city 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 to 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 city contractor.

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(4) Violation of any city or non-city contract provision, as follows, of a character which is regarded by the purchasing manager to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. 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 manager¹⁰⁹ determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.

(6) Violation of the ethical standards set forth in article X of this chapter.

(7) Any violation of the drug-free workplace regulations.

RESOLUTION NO. 10-058

A RESOLUTION ADOPTING THE CITY OF LAS CRUCES DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM. THE RESOLUTION FURTHER DESIGNATES THE DISADVANTAGED BUSINESS ENTERPRISE LIAISON OFFICER (DBELO) FOR THE CITY OF LAS CRUCES AND CERTAIN AUTHORITIES UNDER THE PROGRAM.

The City Council is informed that:

WHEREAS, the U.S. Department of Transportation (DOT) mandates that certain, qualified disadvantaged businesses be insured equal access to procurement opportunities related to federally-funded capital improvements and operating expenditures; and

WHEREAS, the DOT has mandated through regulation that jurisdictions that receive either direct or pass through allocations of federal transportation funding to develop Disadvantaged Business Enterprise (DBE) programs, as well as designate a Disadvantaged Business Enterprise Liaison Officer (DBELO); and

WHEREAS, the DBELO cannot be in a position, such as the city's procurement or purchasing manager, that would create potential conflicts of interest with DBE-related procurement requirements and the DBELO must have direct access to the city's chief executive officer (i.e. City Manager); and

WHEREAS, the DBE program and designation of a city staff person as the DBELO requires adoption of a resolution by the City Council, along with certain restrictions associated therewith.

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

(I)

THAT the City of Las Cruces Disadvantaged Business Enterprise (DBE) Program, as shown in Exhibit "A," attached hereto and made part of this resolution, is hereby approved and adopted.

(II)

THAT the Neighborhood Services Administrator in the Community Development Department is hereby designated as the City's DBE Liaison Officer or DBELO and such designation shall remain with this position or such other equivalent position as may exist in the future, regardless of title, or until amended by City Council Resolution.

(III)

THAT designated DBELO hereby is authorized to have direct access to the City Manager for all DBE-related issues as appropriate and necessary in accordance with the City's adopted DBE Program and associated federal regulations.

(IV)

THAT City staff are hereby authorized to create, establish, or have created or established annual DBE goals for airport and transit projects and programs in accordance the City's DBE Program, without further consideration by the City Council. Such annual goals shall be made available to the public for comment in accordance with the City's DBE Program and shall serve as attachment to the overall DBE Program.

(V)

THAT City staff are hereby authorized to accept State of New Mexico Department of Transportation annual DBE goals for highway projects, as applicable, in accordance the City's DBE Program, without further consideration by the City Council. Such annual goals shall serve as attachment to the overall DBE Program.

(VI)

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

DONE and APPROVED this 17th day of August, 2009.

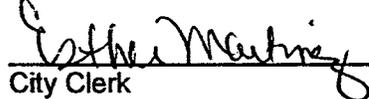
(SEAL)

APPROVED:



Mayor

ATTEST:



City Clerk

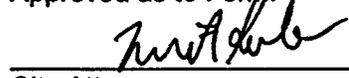
VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Archuleta

Seconded by: Silva

Approved as to Form:



City Attorney