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Council Action and Executive Summary

Item # 7 Ordinance/Resolution# 10-058 Council District: N/A

For Meeting of August 17, 2009

(Adoption Date)

TITLE: 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.

PURPOSE(S) OF ACTION: To adopt a program for Disadvantaged Business Enterprise functions for federally funded transportation projects and to designate the city staff position to serve as the Disadvantaged Business Enterprise Liaison Officer for the City of Las Cruces.

Name of Drafter: David Dollahon <i>[Signature]</i>		Department: Community Development		Phone: 528-3060	
Department	Signature	Phone	Department	Signature	Phone
Public Works	<i>[Signature]</i>	528-3125	Budget	<i>[Signature]</i>	541-2281
Facilities	<i>[Signature]</i>	541-2651	Public Services	<i>[Signature]</i>	528-3477
Community Development	<i>[Signature]</i>	528-3067	Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: As a recipient of either direct or pass through federal transportation funding, primarily for airport, transit, and highway capital improvements, the City is required to develop a Disadvantaged Business Enterprise (DBE) program and to designate a DBE Liaison Officer per regulations from the U.S. Department of Transportation.

DBE efforts, which stem directly from federal civil rights law, are intended to provide equal access to federally-funded procurement opportunities to certified disadvantaged businesses (generally, minority and women-owned small businesses). The State of New Mexico Department of Transportation provides certification for and maintains a listing of DBE's; however, the City of Las Cruces must make efforts to ensure that outreach and access in its procurement processes are afforded to DBE's. Also every effort should be made to reach established goals for the amount of federal transportation procurement in airport, transit, and highway capital and operating projects for Las Cruces or as mandated by the State or Federal Departments of Transportation.

The City's proposed Disadvantaged Business Enterprise Program is attached to the proposed resolution. Without the adoption of a program in accordance with federal regulations, the City will jeopardize the loss of federal transportation funding, now and into the future until a plan is adopted and implemented. Additionally, City-issued bids and proposals for most prime

(Continued on Page 2)

federally-funded contracts cannot be accepted until the program is adopted and annual goals are established. The Resolution, as well as the referenced program, designates a DBE Liaison Officer or DBELO. The DBELO, in addition to program oversight and to supervising outreach efforts, is also required to have direct access to the City's Chief Executive Officer (i.e. City Manager) on DBE related issues, per federal regulations and **cannot** be the City's procurement or purchasing manager, or any other position that could create potential conflicts of interest that would jeopardize implementation of DBE requirements. Due to other federal program oversight responsibilities that include minority and women business enterprise functions with the U.S. Department of Housing & Urban Development, the City's proposed DBELO is to be the Neighborhood Services Administrator in the Community Development Department.

As per federal requirements, legal notices for comment on the proposed DBE program and fiscal year 2010 DBE goals were issued on July 3, 2009. Staff opted to post legal notices in three publications: *The Las Cruces Sun-News*, *The Las Cruces Bulletin* and *El Diario* (in Spanish). Staff has received no comments that would require changes in the proposed program or annual goals.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Exhibit "A" – City of Las Cruces Disadvantaged Business Enterprise Program

OPTIONS / ALTERNATIVES:

1. Vote YES and approve the Resolution approving the City's DBE Plan and designating the City's DBELO to be the Neighborhood Services Administrator.
2. Vote NO and disapprove the Resolution, thus not approving the City's DBE Plan and designating the City's DBELO to be the Neighborhood Services Administrator. Such action could jeopardize federal transportation funding and hinder existing project progress.
3. Modify the Resolution and vote YES to approve the modified Resolution. This action would be based on the Council's discretion.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff. Tabling or postponing could jeopardize the City's ability to utilize federal funding due to pending deadlines, primarily for stimulus projects at the airport and street projects and the City's intermodal facility.

(Continued on Page 3)

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 ____ day of _____, 2009.

(SEAL)

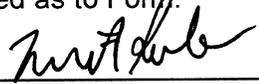
ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

Approved as to Form:



City Attorney

APPROVED:

Mayor

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____



CITY OF LAS CRUCES

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM

July 2009

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 Highways Administration (FHWA), and the Federal Transit Administration (FTA). As a condition of receiving this assistance, the City of Las Cruces has signed an assurance 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 part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

David Dollahon, City of Las Cruces Neighborhood Services Administrator, has been designated as the DBE Liaison Officer (DBELO). In that capacity, Mr. Dollahon 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 Sun-News, 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.

Terrence Moore, City Manager

Date

Issuing Agency: City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004

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/financial_srvs/purchasing 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 Requirements

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 create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age of firm, and annual gross receipts of firms.

The 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, we use the U.S. Census Bureau's most recent year's Economic Census Summary Statistics for Doña Ana County, New Mexico (www.census.gov/econ/census02). 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 DBEs registered with NMDOT divided by the number of businesses registered in the county. 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 activity.

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

Section 26.13 Federal Financial Assistance Agreement

The City of Las Cruces has signed the following assurances, 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 agency, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the 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 subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The 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 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:

David Dollahon
 Neighborhood Services Administrator
 PO Box 20000
 Las Cruces NM 88004
 (575) 528-3060
ddollahon@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 Terrence R. Moore, Las Cruces City Manager 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 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 responsible for the DOT-funded project on DBE matters and achievement.
6. Determines contractor compliance with good faith efforts.
7. Participates in pre-bid meetings involving DOT-funded projects applicable to this program.
8. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

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

Section 26.27 DBE Financial Institutions

It is the policy of the 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/financial_srvs/purchasing.

Section 26.29 Prompt Payment Mechanisms

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

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

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. 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. Newly certified DBE's will be added to the consolidated directory, and those no longer qualified, as determined by NMDOT will be deleted. In any event, the directory will be revised at least annually by NMDOT.

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

<http://www.nmshtd.state.nm.us/main.asp?secid=11175>, OR obtained from the

City of Las Cruces Purchasing Department
 PO Box 20000
 Las Cruces NM 88004
 (575) 541-2555
 Website:

http://www.las-cruces.org/financial_srvs/purchasing/

<http://www.las-cruces.org>

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.

Section 26.35 Business Development Programs

The City of Las Cruces has not 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 26.109.

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 remedies 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 also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished as follows:

If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the 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 non-compliant 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.
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.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Las Cruces does not use 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 the relative availability of DBE's in the City of Las Cruces market area. The second step is to review relevant evidence and historical data available and determine if adjustments to the base figure are needed. The FTA goal methodology for this fiscal year can be found in Attachment 5. Currently FHWA goals are established by the NMDOT. The 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 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, 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.

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.

Section 26.51(d-g) Contract Goals

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 Procedures

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

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

The 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 of Las Cruces treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment, and;
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) working days of being informed by the 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: Terrence Moore, City Manager, P.O. Box 20000, Las

Cruces, NM 88004, phone: 575.51.2076. fax: 575.541.2077, e-mail: tmoore@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. 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.

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

The City of Las Cruces will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City of Las Cruces will require the prime contractor to obtain the City of Las Cruces prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, the City of Las Cruces contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue termination for default proceedings.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Las Cruces to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. Separate goals are established for FAA, FHWA and FTA funded projects. **A DBE race/neutral contract goal of 9.6% percent has been established for this contract for FAA funded projects, of 8.07% percent for this contract for FHWA funded projects, and of 5.6% percent for this contract for FTA funded projects. Because this is the first year of the City of Las Cruces**

DBE plan, we will not establish race-conscious goals until we have more history as to the success of meeting goals through race neutral means.

The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

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

Section 26.55 Counting DBE Participation

The 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.

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

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

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.
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/financial_srvs/purchasing/

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) or by contacting the City of Las Cruces Purchasing Department (see contact information in 26.31 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 will complete this review at least every three years to ensure there have not been any changes in the bidder' DBE status. The NMUCP schedule for this review process will be that one-third of the firms will be reviewed each year.

“No Change” Affidavits and Notices of Change (26.83(j))

Each DBE is required to inform the NMUCP and the City of Las Cruces 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) over the firm's previous three fiscal years do not exceed \$22.41 million.

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

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

<http://www.nmshtd.state.nm.us/main.asp?secid=11175>. This document may also be downloaded as a courtesy from the City of Las Cruces' Purchasing Section website at: http://www.las-cruces.org/financial_srvs/purchasing/

Section 26.85 Denials of Initial Requests for Certification

When the NMUCP denies a request by a firm, which is not currently certified with the NMUCP to be certified as a DBE, or denies a DBE firm whose certification has expired at the end of three years, the NMUCP will provide the firm a written explanation for denial, specifically reinforcing the evidence in the record that supports each reason for denial. All documents and other information on which denial is based will be made available to the applicant, on written request. When a firm is denied certification, it may not reapply to the NMUCP for certification for a time period of 12 months from the date the firm received the denial letter. The firm may appeal 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
 Fax: (202) 366-5575

Information on how the appeals process works, how to file an appeal, or what information to provide for an appeals process can be found on the USDOT website at: <http://www.dotcr.ost.dot.gov/asp/dbe.asp>.

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 26.109 Information, Confidentiality, Cooperation

The City of Las Cruces will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, the City of Las Cruces will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

The 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 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.

ATTACHMENTS

Attachment 1	Acronyms used in this policy
Attachment 2	City of Las Cruces required DBE forms for Bidders
2-A	<i>Bidder's List</i>
2-B	<i>Demonstration of Good Faith Effort (Forms 1 and 2)</i>
2-C	<i>Bidder's Questionnaire</i>
2-D	<i>Schedule of DBE Participation</i>
2-E	<i>Schedule of DBE Unavailability</i>
2-F	<i>Certification of Lack of DBE Availability</i>
Attachment 3	City of Las Cruces Organizational Chart
Attachment 4	City of Las Cruces remedies for contractors failure to comply
Attachment 5	Goal calculation methodology for FTA funding for current fiscal year

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-B

Forms 1 & 2 for Demonstration of Good Faith Efforts
(Forms 1 and 2 should be provided as part of the solicitation documents.)

Form 1: Disadvantaged Business Enterprise (DBE) Utilization

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

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

Contractor

—

State Registration No. _____

By _____
(Signature) (Title)

Address _____

Phone No. _____ Zip Code _____

Form 2:

LETTER OF INTENT

Name of Bidder/Offeror's

Firm:

Address:

City, State, Zip:

Name of DBE Firm:

Address:

City, State, Zip:

Telephone:

Description of Work to be
performed by DBE Firm:

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

Affirmation:

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

By: _____
(Signature) (Title)

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

(Submit this page for each DBE subcontractor)

ATTACHMENT 2-C

Bidder's Questionnaire

Sponsor's Name:

Project Name:

City, State:

Federal Fiscal Year:

Project No:

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

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

(Duplicate form as necessary)

ATTACHMENT 2-D

Section 26.53(b)

Schedule of DBE Participation (Must be submitted at the time of bid)

_____ Bid Number _____ (Name of Prime Contractor)

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

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

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

Signature of Prime Contractor Official

Signature of DBE Firm Official

Date

Signature of DBE Firm Official

Signature of DBE Firm Official

Signature of DBE Firm Official

ATTACHMENT 2-E

Section 26.53(b)

Schedule of DBE Unavailability (Must be submitted at the time of bid)

_____ Bid Number _____
(Name of Prime Contractor)

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

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

Date: _____

Signature: _____

Title: _____

ATTACHMENT 2-F

Section 26.53 (b)

Certification of Lack of DBE Availability

I, _____, _____
(Name) (Title)

of _____
(Prime or General Bidder)

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

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

(Name and/or Number of Contract)

DBE Contractor	Work Items Sought
Name:	
Address:	
Phone:	

736
Attachment 4
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 manager 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.

Attachment 5

Goal Calculation Methodology for FTA Funding FY2010

Methodology used to Calculate Overall DBE Goal for FTA Funding

Agency City of Las Cruces/RoadRUNNER Transit
 Goal Period FFY 2010
 Overall DBE Goal 5.6%

Step 1: 26.45(c) Determination of Base Figure

Determine the base figure for the relative availability of DBEs.

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

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs (31)}}{\text{All firms ready, willing and able (553)}} = 5.6\%$$

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

- The RoadRUNNER evaluated the NMDOT DBE System Directory for existing certified DBEs participating in the Unified Certification Program for all NAICS codes for Catron, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Sierra, and Socorro Counties. The budget for the transit intermodal center is under \$2M. It was assumed that contractors from locations beyond these counties would not bid on this project due to the limited budget.
- Vendor information was collected for all DBE participants in the ten county area.

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

- Bureau of Labor Statistics, Quarterly Census of Employment and Wages found at www.eed.state.nm.us/DataCenter/MoreData/Workforce/QuarterlyCensusofEmploymentandWages.
- Included all Construction of Buildings, NAICS 236, for Catron, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Sierra, and Socorro Counties. Due to the limited number of certified DBEs in other NAICS commodity codes, establishment data for these entities was not included in order to avoid diluting the goal calculation.

County	Number of Establishments: Construction of Buildings (NAICS 236)
Catron	4
Dona Ana	253
Eddy	50
Grant	51
Hidalgo	5
Lea	43
Luna	29
Otero	91
Sierra	16
Socorro	11

Total	553 738
-------	---------

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was 5.6%

Step 2: 26.45(d) Adjustment to Base Figure

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

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

- There is no historical record for the City of Las Cruces and therefore there is no data to adjust the base figure. We anticipate that we will be able to achieve our overall DBE goal using race-neutral means.

Based on this data, no adjustment will be made and the overall DBE goal for 2010 will be 5.6%.

June 25, 2009

Note:

The DBE Goal for FHWA projects is established by NMDOT. The FY2010 goal is 8.07%. Information about the establishment of these goals is available from the City Public Works Division, Project Development Section.

The DBE Goal for FAA projects is established annually by an independent contractor. The FY2010 goal is 9.6%. Information about the establishment of this goal is available from the Facilities Division, Airport Section.