

**Disadvantage Business Enterprise Program
Las Cruces International Airport
Las Cruces, New Mexico**

This Disadvantage Business Enterprise program update is prepared because the City of Las Cruces was recently notified that they would be eligible for federal funding of an airport program. This program covers the period from October 1, 2024 through September 30, 2027.

This report is prepared under USC, Title 49,
Part 26



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July 2025

**Las Cruces International Airport
Las Cruces, New Mexico
Disadvantage Business Enterprise Program
July 2025**

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Las Cruces owner of **Las Cruces International Airport** 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 has signed assurances that it will comply with 49 CFR Part 26 (hereafter referred to as "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 the **City of Las Cruces** policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
7. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

J.C. Borrego, Assistant City Manager, has been delegated as the DBE Liaison Officer. In that capacity, **Mr. Borrego** is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the **City of Las Cruces** in its financial assistance agreements with the Department of Transportation.

The City of Las Cruces has disseminated this policy statement to the **City Council** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **City of Las Cruces DOT**-assisted contracts through the City Purchasing Department web site and in any Invitation for Bids (IFB), Requests for Bids (RFB) or Requests for Proposals (RFP) issued by the City's Purchasing Department.



INTERIM Assistant City Manager
DS 7/23/2025



Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Additionally, the City 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; the Transportation Equity Act for the 21st Century (TEA-21, Public Law 105-178; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFTEA-LU), Public Law 109-59: Moving Ahead for Progress in the 21st Century (MAP-21), Public Law 112-141; and Fixing America's Surface Transportation (FAST) Act, Public Law 114-94.

Section 26.5 Definitions

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

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26/subpart-A/section-26.5>

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 Data Collection and Reporting Requirements

Reporting to DOT

The **City of Las Cruces** will provide data about its DBE Program to the Department as directed by DOT and its operating administrations.

DBE participation will be reported as follows:

- **FAA:** The **City of Las Cruces** will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. The **City of Las Cruces** will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system, Civil Rights Connect.
- **FTA:** The **City of Las Cruces** 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.
- **FHWA:** The **City of Las Cruces** will report DBE participation on a quarterly basis, using DOT form 4630.

Bidders List

The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on the **City of Las Cruces** federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

The City will utilize a bidders list through contracted services (currently BidNet), 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.

City of Las Cruces will obtain the following bidders list (**Attachment 3**) information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm’s status as a DBE or non-DBE
- Race and gender information for the firm’s majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc) rather than requesting an exact figure from the firm.

The City 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. 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 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. The relative availability of DBE's within the city is expressed as a percentage of the Doña 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 will require prospective bidders on DBE program-eligible projects to submit forms 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, whether 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.

The City of Las Cruces will enter this data in the Department's designated system (Civil Rights Connect) no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the **City of Las Cruces** will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

The **City of Las Cruces** will maintain records documenting a firm's compliance with the requirements of this part. Other certification or compliance-related records will be retained for a minimum of (3) three years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

[Note: The following language is to be used verbatim, as stated in 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. The **City of Las Cruces** 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 of Las Cruces** DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **City of 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.*).

Contract Assurance: **City of Las Cruces** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

[Note: The following language is to be used verbatim, as stated in 26.13(b)]

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, which may include, but is not limited to:

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The **City of Las Cruces** is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year.

The **City of Las Cruces** is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **City of Las Cruces** is in compliance with it and Part 26. 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** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the **City of Las Cruces**.

J.C. Borrego, Assistant City Manager
City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
(575) 528-3033
jborrego@lascruces.gov

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 provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO is supported by the City 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's progress toward attainment and the City program administrator(s) responsible for the DOT-funded project on DBE matters and achievement

5. Advises the City Council, and the City program administrator(s) 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.
8. Provides outreach to DBEs and community organizations to advise them of opportunities.

In support of the DBELO, the City's Purchasing Department staff is responsible for the following:

1. Maintains the DBE policy and support material on the Department's website.
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 contractors 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 these institutions. The availability of such institutions will be investigated on an annual basis.

The City 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: <https://www.federalreserve.gov/>

Information on the availability of such institutions can also be obtained from the DBE Liaison Officer or the City's Purchasing Department website:

<https://lascruces.gov/community/transportation/roadrunner-transit/disadvantaged-business-enterprise/>

The **City of Las Cruces** will re-evaluate the availability of DBE financial institutions.

Section 26.29 Prompt Payment Mechanisms

The **City of Las Cruces** requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

The City 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 of Las Cruces** will decline to hold retainage 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-mentioned 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.

[FAA Recipients include the following]

For every airport construction project funded under Federal grant assistance programs, The **City of Las Cruces** includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to “30 days” will be revised accordingly.

150/5370-10 Section 90-06 Partial Payments. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due

to the Contractor since the last estimate amounts to less than five hundred dollars.

Prompt Payment Monitoring for DBEs and Non-DBEs

The **City of Las Cruces** clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the **City of Las Cruces** undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- The **City of Las Cruces** will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.
- The City 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 dollars amount 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.
- The **City of Las Cruces** requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the **City of Las Cruces'** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of **City of Las Cruces** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
 - **City of Las Cruces** proactively reviews contract payments to subcontractors including DBEs on a monthly basis with each application for payment. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the **City of Las Cruces** by the prime contractor.

Prompt Payment Dispute Resolution

City of Las Cruces has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

1. Require that prime contractors include in their subcontract's 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.
2. 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.
3. If the prime contractor is found to be in violation or fails to abide by the prompt payment mechanisms, the City 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:
 - a. Termination of Contract.
 - b. Initiation of appropriate suspension, debarment or de-certification proceedings pursuant to 49 CFR Part 26.
 - c. Referral of any unlawful actions to the appropriate enforcement agencies pursuant to 49 CFR Part 26.
 - d. Prosecution pursuant to 18 USC 1001.
 - e. Other action as appropriate, at the discretion of the City.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by **City of Las Cruces** to resolve prompt payment disputes, affected subcontractor may contact the responsible **FAA/FHWA/FTA** contact.

[FAA Recipients only]

- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met

The **City of Las Cruces** will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The City of Las Cruces is a **non-certifying** member of the **New Mexico Unified Certification Program (UCP)**. The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31.

The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm: <https://nmdot.dbesystem.com/> (**Attachment 4**).

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

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. The City will re-evaluate for overconcentration annually. In the future should an overconcentration of DBEs by type of work be determined to exist, the **City of Las Cruces** 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 and Mentor-Protégé Programs

The **City of Las Cruces** has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

The **City of Las Cruces** implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the **City of Las Cruces'** DBE program, (**Attachment 7**).

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.

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 of Las Cruces** that the **City of Las Cruces** has reviewed contracting records and monitored work sites for this purpose. 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.

As part of our enforcement efforts, the City 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.

Monitoring Contracts and Work Sites

The **City of Las Cruces** reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to

which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by **project managers/consultants**. Contracting records are reviewed by **DBELO/project managers/consultants**. The **City of Las Cruces** will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

Small Business Provision

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

The small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation. The **City of Las Cruces** acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

It is the policy of the **City of Las Cruces** to ensure that Small Businesses as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. 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.

Small Business Provision Implementation Plan

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

- a. Ensure nondiscrimination in the award and administration of DOT-assisted projects.
- b. Create a level playing field on which small businesses can compete fairly for DOT assisted projects.
- c. Ensure that the Small Business Program is narrowly tailored in accordance with applicable law.
- d. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are qualified to participate, by verifying Small Business Administration Certification

numbers on City Vendor Registration forms and formal definitions of Small Business in accordance with the Small Business Act.

- e. 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.
- f. 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.
- g. 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.
- h. 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.
- i. Whenever practical and to the extent allowed by law, award contracts for tangible goods based on lowest unit price received from multiple small businesses instead of a lump sum award to one large business.
- j. Utilize Job Order Contract for awarding minor construction projects to small contractors.
- k. Waive payment/performance bonds for subcontractors.
- l. Waive payment/performance bonds on contracts less than \$25,000.
- m. Reduce insurance requirements for small, non-construction contracts, costing less than \$10,000, including those to be performed by small businesses.
- n. Ensure the application of the Prompt Payment mechanisms for all business interests, not just DBE, as contained elsewhere within this Plan.
- o. Add a contract condition requiring proof of release of lien by all subcontractors and suppliers, including small businesses, from prime contractors prior to final payment on a contract, thus ensuring that the subcontractors and suppliers have been paid before final payment is made to the prime contractor.

Small Business Outreach

The **City of Las Cruces** encourages small business participation in **City of Las Cruces** contracting opportunities. To assist these businesses in knowing how to do business with the **City of Las Cruces** and to take advantage of programs that support small business participation, the Purchasing Section, with assistance from City Departments

that offer contracting opportunities, will implement the following activities to encourage this participation.

1. At least once a year, beginning in September 2020, the Purchasing Section will offer training to small businesses interested in participating in City contracts. This training will include:
 - a. Common types of services and goods contracted by the City
 - b. How to register as a vendor with the City Purchasing Department and declare the types of services and goods your business offers by commodity codes and NAICS codes
 - c. Self-service vendor registration
 - d. Bidding practices that encourage small business participation (e.g. unbundling large projects)
 - e. The procurement process (How bids, quotes, etc. are solicited; how to ask and who to ask questions about the solicitation; pre-bid meetings; how contracts are awarded; how approved purchase orders issued, and payments are processed; etc.)
 - f. Business insurance and certification requirements for some city contracting opportunities
 - g. Types of certification requirements requested for some contracting opportunities, especially those involving State or Federal funds
 - h. How to learn of contracting opportunities on BidNet
 - i. Information about Minority/Women/Disadvantaged Business Enterprise Programs

Outreach to small businesses for these training sessions will include:

- a. Email notice of training to vendors providing services and goods in the Las Cruces area and currently on the City vendor list, that have self-declared their business to be a Minority/Women/Disadvantaged Enterprise.
- b. Invite businesses registered with the New Mexico DOT as a Disadvantaged Business Enterprise (DBE) that do business in Doña Ana County
- c. Reach out to user City Departments for recommendations of vendors to notify
- d. Reach out to the City Community Development Department and the Economic Development Department for potential contacts for this training
- e. Distribute information about upcoming training through the Greater Las Cruces Chamber of Commerce, the Las Cruces Green Chamber of Commerce, and the Las Cruces Hispanic Chamber of Commerce
- f. Publish announcements of trainings in local papers and on the City Website

- g. Coordinate with Las Cruces Public Schools, New Mexico State University, Doña Ana County, and the New Mexico Department of Transportation to share information to their vendors about upcoming training or when possible, co-host such training with these agencies.
2. The City's Purchasing Section will maintain a record of each of these events to include a list of the invited small businesses, a roster of business representatives who attend the event, and an agenda of the topics covered at the event. The City's Disadvantaged Business Enterprises Liaison Officer (DBELO) will also attend these events to be a resource as a subject matter expert.
3. When specific procurement solicitations are issued by the City, the Purchasing Section places these on BidNet. The Purchasing Section will also seek information from the user Department as to additional businesses that should be advised of the solicitation and will email the solicitation information to the business.
4. Provide bids to various local sources so that small businesses have greater access to procurement opportunities, including but not limited to the local SBA office, union houses and shops, local chambers of commerce, and local builder associations.

Small Business Program Implementation Schedule

For all elements not already in existence, the **City of Las Cruces** will implement the Small Business provision no later than nine (9) months after FTA approves this program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City will triennially 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 triennially 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 DOT-assisted contracting opportunities. Generally, the **City of Las Cruces** 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 of Las Cruces** 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 years' worth of data, then no adjustment will be made to the original base figure.

The **City of Las Cruces** shall maintain a separate listing and documentation on each goal setting methodology. The FTA goal methodology will be established every three (3) years based on FFY funds. Currently FHWA goals are established by the NMDOT. The City of Las Cruces, Las Cruces International Airport receives FAA funding and independently has its goals calculated triennially; however, this policy will also guide the implementation of FAA goals.

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

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

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

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

In establishing the overall goal, **City of Las Cruces** will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-

disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by **City of Las Cruces** to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before **City of Las Cruces** is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which **City of Las Cruces** engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, **City of Las Cruces** will publish a notice announcing the proposed overall goal before submission to the **FAA**. The notice will be posted on the **City of Las Cruces**' official internet web site. If the proposed goal changes following review by **FAA**, the revised goal will be posted on the **City of Las Cruces**' official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of **City of Las Cruces**. This notice will provide that the **City of Las Cruces** will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) and the location(s) where the proposed goal may be reviewed.

The Overall Three-Year DBE Goal submission to **FAA** will include any information and comments received, who provided the comment, and how **City of Las Cruces** considered and responded to any comments and information received before finalizing the goal.

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

Project Goals

If permitted or required by the **FAA/FHWA/FTA**, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

Prior Operating Administration Concurrence

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

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

Section 26.47 Failure to meet overall goals

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

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

City of Las Cruces understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The **City of Las Cruces** will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section to dbConnect.

Section 26.49 How are overall goals established for transit vehicle manufacturers?

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 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 of Las Cruces** 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 of Las Cruces**.

Section 26.51 Means Recipients Use to Meet Overall Goals

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 of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

- Provides information on City 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 breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 5** to this program.

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

Contract Goals

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

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every 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 in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix 6 to CFR Part 26. (**Attachment 1.**)

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:

- a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- a. No later than 5 days after bid opening as a matter of **responsibility**.

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by **City of Las Cruces**. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor **City of Las Cruces** will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, **City of Las Cruces** will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which **City of Las Cruces** solicits proposals to design and build a project with minimal project details at time of letting, **City of Las Cruces** may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, **City of Las Cruces** will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. **City of Las Cruces** and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

The **City of Las Cruces** 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, **City of Las Cruces 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.

Administrative Reconsideration of Good Faith Efforts determinations

A person or entity responsible for reviewing and making decisions on requests for reconsideration of a previous administrative decision.

Within 5 days of being informed by the **City of Las Cruces** that it is **not responsive** because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offerors should make this request in writing to the following reconsideration official: ***Ikani Taumoepeau, 700 N. Main Street, Las Cruces, NM 88001; itaumoepeau@lascruces.gov.***

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The

bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

City of Las Cruces will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that **City of Las Cruces** deems appropriate if the prime contractor fails to comply with the requirements of this section.

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

City of Las Cruces will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless **City of Las Cruces** causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

City of Las Cruces will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains **City of Las Cruces** written consent as provided in § 26.53(f); and
- (2) Unless **City of Las Cruces** consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

City of Las Cruces may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

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

Before transmitting to **City of Las Cruces** the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **City of Las Cruces** sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising **City of Las Cruces** and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why **City of Las Cruces** should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), **City of Las Cruces** may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

See form to be included in bid specification packages, **(Attachment 3)**.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If **City of Las Cruces** requests

documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. **City of Las Cruces** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

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

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

[FAA Funding Recipients Only]

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The **City of Las Cruces** participates but is a **non-certifying member** of the **NMDOT** Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. **NMDOT** UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying **NMDOT** UCP members make all certification decisions based on the facts as a whole.

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

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

<https://www.dot.nm.gov/highway-operations-program/operations-support-division-director/construction-civil-rights-bureau/disadvantaged-business-enterprise-certification/>

A website link to the Uniform Certification Application form and documentation requirements are found in **Attachment 8** to this program.

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full UCP agreement. (**Attachment 9**).

Section 26.81 Unified Certification Programs

City of Las Cruces participates but is a **non-certifying member** of a Unified Certification Program (UCP) administered by **NMDOT**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.91 Actions Following DOT Certification Appeal 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 26.101 Compliance Procedures Applicable to City of Las Cruces

The **City of Las Cruces** understands that if it fails to comply with any requirement of this part, **City of Las Cruces** may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR

1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

City of Las Cruces understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part 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 Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, 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 Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department 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 Department 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 Department 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 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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

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

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

ATTACHMENTS

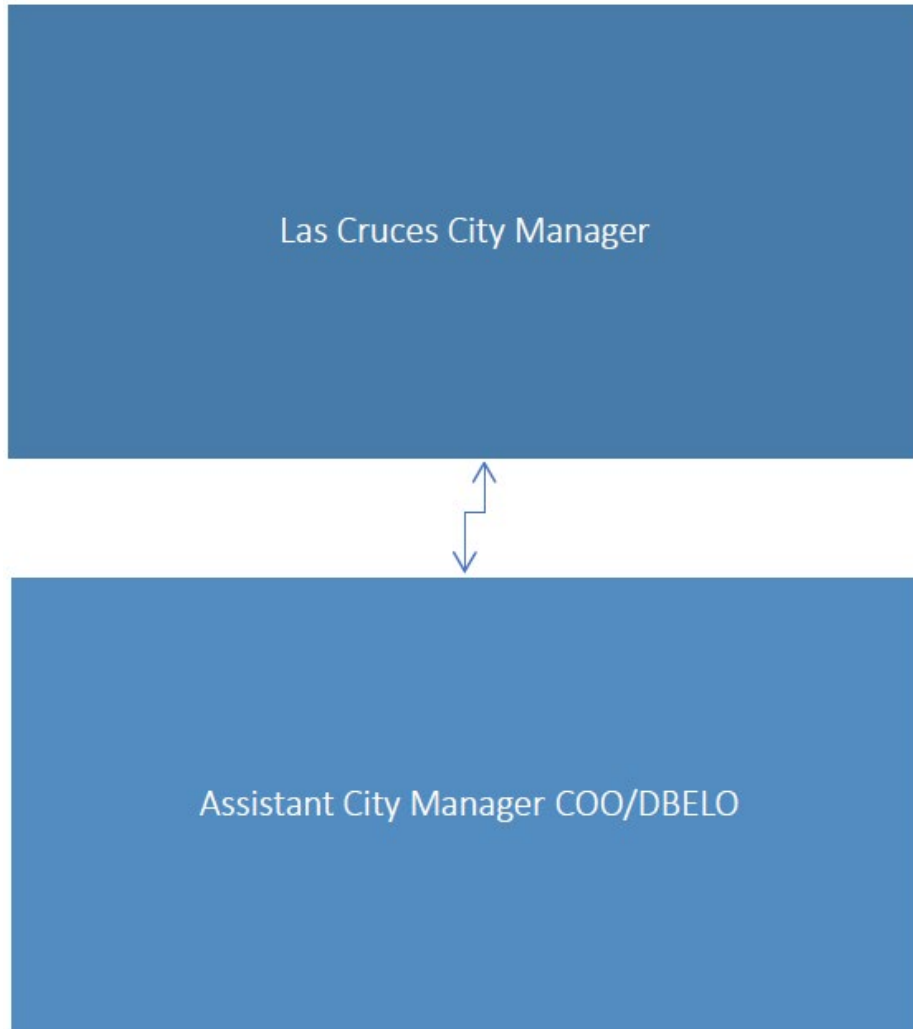
- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology – Submitted Separately
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 Link to State's UCP Agreement
- Attachment 10 Small Business Element Program

ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2
ORGANIZATIONAL CHART



ATTACHMENT 3

Bidder's List Collection Form

[Note: § 26.11(c) requires Recipients to collect bidders list information from all bidders at the time of bid submittal, and to enter it into USDOT's designated system. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not). The form below is NOT mandatory. If you use an electronic system to collect this information, you may instead provide a screenshot or other example showing how the system collects all the required data.]

NAICS codes can be found at the following: <https://www.naics.com/naics-drilldown-table/>

Only include the NAICS codes for the scopes a firm is bidding. For example, if a DBE is certified in five NAICS codes but only one for the scope of work, only that one NAICS code should be included on the bidders lists.

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million

ATTACHMENT 4

State of New MexicoDOT UCP Directory can be found here:

<https://nmdot.dbesystem.com/>

ATTACHMENT 5

Overall Goal Methodology Submitted Separately to FAA Civil Rights Connect

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

For **each DBE and Non-DBE** proposed to be utilized under the contract, the bidder shall complete and submit with the bid, the **Bidder's List Collection Form** located in **Attachment 3**. Make additional copies, if necessary.

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid.
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

NMDOT General Office
1120 Cerrillos Road
Sante Fe, NM 87505
Tel: (505) 795-1401
<https://nmdot.dbesystem.com/>

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

**DBE Regular Dealer/Distributor
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan. **DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)?

YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract, as follows
2. **NM Admin Code §1.4.7.7 New Mexico Administrative Code Suspension or Debarment of Bidders, Offerors or Contractors.**
<https://casetext.com/regulation/new-mexico-administrative-code/title-1-general-government-administration/chapter-4-state-procurement/part-7-suspension-or-debarment-of-bidders-offerors-or-contractors/section-1477-definitions>
3. **Las Cruces Municipal Code Chapter 24, Section 256, Authority to Debar**
https://library.municode.com/nm/las_cruces/codes/code_of_ordinances?nodeId=PTIIMUCO_CH24PRCO_ARTVIDESU_S24-222AUDE

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

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

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 9

New Mexico's UCP Agreement can be found here:

<https://www.dot.nm.gov/highway-operations-program/operations-support-division-director/construction-civil-rights-bureau/disadvantaged-business-enterprise-certification/>

ATTACHMENT 10

Small Business Element

1. Objective/Strategies

- (1) Prime contracts will be limited to the FAA minimum requirements for general provisions, contract provisions, and bonding
- (2) 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.
- (3) On prime contracts not having DBE contract goals, requiring 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.
- (4) 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.
- (5) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition

DBE firms should be identified in the Small Business element of the Recipient’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.

- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
- Personal Net Worth standards – should be consistent with 49 CFR Part 26 thresholds.
- Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.]

3. Verification

Recipients must diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms.

4. Monitoring/Record Keeping

- The City of Las Cruces will track the amount of prime contracts and subcontracts awarded to small businesses as a percentage of overall contracts.

5. Assurances

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