



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MANUAL

May 2025

City of Albuquerque Transit Department

POLICY STATEMENT

The City of Albuquerque – Transit Department (ABQ RIDE) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 and, accordingly, establishes annual DBE participation goals. ABQ RIDE has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, ABQ RIDE has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of ABQ RIDE to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. Specifically, it is also our policy:

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

The ABQ RIDE Principal Planner has been designated as the DBE Liaison Officer. In that capacity, the ABQ RIDE Principal Planner 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 ABQ RIDE in its financial assistance agreements with the Department of Transportation.

This policy statement shall be disseminated to the City of Albuquerque’s Governing Body, to all of the Divisions and Sections of ABQ RIDE, and to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts in procurement documents issued by ABQ RIDE. This policy statement is also available on the ABQ RIDE website at:

<https://www.cabq.gov/transit/opportunities/lets-do-business/disadvantaged-business-enterprise>.


Leslie Keener, Director

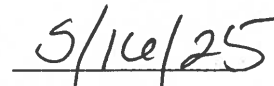

Date

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MANUAL

Chapter 1 – GENERAL

Section 1 - Objectives

(Ref: 49 CFR §26.1)

ABQ RIDE's DBE Program objectives are found in the policy statement on the first page of this program.

Section 2 - Applicability

(Ref: 49 CFR §26.3)

As a recipient of Federal funds ABQ RIDE is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance. This DBE Program applies to ABQ RIDE and any recipient of the following types of funds:

- Titles I, III, V and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914
- Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
- Titles I, III, and V of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for 1 Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144
- Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405
- Bipartisan Infrastructure Law (BIL) / (Public Law 117-58) 'Infrastructure Investment and Jobs Act' in 2021
- Federal transit laws in Title 49
- And any subsequent federal transportation funding laws.

The DBE Program does not apply if ABQ RIDE lets a contract in which DOT financial assistance does not participate, in which case 49 CFR Part 26 does not apply to the contract.

Section 3 - Definitions

(Ref: 49 CFR §26.5)

ABQ RIDE adopts the complete definitions contained in 49 CFR Part 26, Section 26.5 for this program, and specifically the following terms helpful for administering ABQ RIDE's program.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

FTA Tier I recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Section 4 - Non-discrimination

(Ref: 49 CFR §26.7)

ABQ RIDE 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, ABQ RIDE 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 5 - Record Keeping and Reports

(Ref: 49 CFR §26.11)

Reporting to DOT: 26.11(a & b)

ABQ RIDE will report DBE participation to FTA on a semi-annual basis on June 1 and December 1, using the Uniform Report of DBE Awards or Commitments and Payments DOT form. These reports will reflect awards/commitments and payments actually made to DBE's on DOT-assisted contracts during this reporting period. The report also identifies work performed through prime contracts and subcontracts, awards made through race neutral and race conscious bids, and a breakdown by ethnicity and gender for contracts awarded. ABQ RIDE has developed detailed internal instructions for filling out these semi-annual Uniform Reports. Those instructions are attached as Attachment 7, Forms & Procedures, A.4.

Bidders List: 26.11(c)

ABQ RIDE, in coordination with the City of Albuquerque's purchasing and contract divisions, will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to assist in the calculation of overall DBE program goals. The bidder list will include the firm name, firm address, DBE or non-DBE status, race and gender information for the firm's majority owner, NAICS code(s) applicable to the scope of work the firm bid on, age of the firm, and annual gross receipts for the firm (by bracket such as less than \$1 million, \$1-3 million, etc.). Both the prime and subconsultant firms are added to ABQ RIDE's bidder's list. This information will be required of bidders as part of their bid responses; ABQ RIDE will include a form for bidders to fill out as part of the bid package.

ABQ RIDE will report bidders list information in the DOT's designated system no later than December 1 following the fiscal year in which each 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 data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Section 6 - Federal Financial Assistance Agreement*(Ref: 49 CFR §26.13)***Assurance: 26.13(a)**

ABQ RIDE has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

The recipient 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 [49 CFR part 26](#). The recipient 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 recipient's 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 recipient 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.).

In the event ABQ RIDE has sub-recipients, this language will appear in any financial assistance agreement.

Contract Assurance: 26.13(b)

Each contract ABQ RIDE signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

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

Chapter 2 – ADMINISTRATIVE REQUIREMENTS

Section 1 - DBE Program Updates

(Ref: 49 CFR §26.21)

Since ABQ RIDE is a Tier 1 recipient (see definitions), we will continue to carry out this program until all funds from DOT financial assistance have been expended. ABQ RIDE will submit significant changes in the program to the FTA operating administration for approval.

All sub-recipients must comply with ABQ RIDE's DBE program plan and may not have a plan independent from ABQ RIDE.

Section 2 - Policy Statement

(Ref: 49 CFR §26.23)

ABQ RIDE adopted a Policy Statement that complies with the requirements of 49 CFR Part 26.23. The policy is elaborated on the first page of this program. ABQ RIDE circulates the Policy Statement throughout the organization and to the DBE and non-DBE business communities that perform work on DOT-assisted contracts, as well as in procurement documents issued by ABQ RIDE. The Policy Statement also resides on the ABQ RIDE website at:

<https://www.cabq.gov/transit/opportunities/lets-do-business/disadvantaged-business-enterprise>.

Section 3 - DBE Liaison Officer (DBELO)

(Ref: 49 CFR §26.25)

ABQ RIDE has designated DBE Liaison Officer (DBLEO), who is a Planning Division staff member:

Principal Planner
100 First St. SW
Albuquerque, NM 87102
(505) 724-3100

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that ABQ RIDE complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City of Albuquerque's Chief Administrative Officer concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program. Specific personnel in these roles is identified on ABQ RIDE's DBE webpage at: <https://www.cabq.gov/transit/opportunities/lets-do-business/disadvantaged-business-enterprise>.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities 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. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
5. Analyzes ABQ RIDE's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the Director and CAO's office on DBE matters and achievement.
8. Connects DBEs with resources to obtain information and assistance in preparing bids, obtaining bonding and insurance.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.
10. Submits semi-annual DBE Reports.

Section 4 - DBE Financial Institutions

(Ref: 49 CFR §26.27)

It is the policy of ABQ RIDE 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 contract to make use of these institutions. Available DBE financial institutions are listed in the NMDOT DBE Certified Directory.

Information on the availability and services of such institutions can be obtained from the DBE Liaison Officer.

Section 5 - Prompt Payment Mechanisms

(Ref: 49 CFR §26.29)

ABQ RIDE will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract receives from ABQ RIDE. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ABQ RIDE. This clause applies to both DBE and non-DBE subcontracts.

The prime contractor, design consultant and other consultant will be required to submit appropriate payment documentation on Form A-644 to the ABQ RIDE project manager. A prime contractor, design consultant or other consultant shall be required to fully document any

alleged disputes with its subcontractors or subconsultants. The prime contractor, design consultant, or other consultant shall ensure that all situations in which regularly scheduled payments are not made to subcontractors or subconsultants are reported to ABQ RIDE. If the prime contractor, design consultant, or other consultant is found to be in violation or fails to abide by the prompt payment mechanisms, ABQ RIDE shall impose sanctions as stated under Chapter 2, Section 9 – Monitoring and Enforcement. The prime contractor, design consultant, or other consultant shall further be required to release final, full payment to the subcontractors or subconsultants within thirty (30) calendar days of satisfactory completion of the entire subcontractor's or subconsultant's work and final payment of such work by ABQ RIDE.

Section 6 - DBE Directory

(Ref: 49 CFR §26.31)

ABQ RIDE shall seek to achieve that level of participation that can be achieved absent discrimination by promoting awareness of the NMDOT Uniform Certification Program and DBE Directory that identifies all certified firms eligible to participate as DBEs. NMDOT continuously updates the directory and makes it available to prime construction contractors, prime design consultants, other consultants and the public. The directory identifies DBE contractors, NAICS codes, name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

The NMDOT DBE Program Guidelines and DBE Directory are available by contacting the Disadvantaged Business Enterprise Certification Officer by calling (505) 570-7978 or emailing DBE.CERT@state.nm.us. NMDOT maintains and makes available to all interested persons a real-time directory identifying all firms eligible to participate as DBEs in the ABQ RIDE DBE Program and includes the firm's name, address, telephone number, and the type(s) of work by NAICS code that the firm is certified to perform as a DBE. The directory is available online at: <https://nmdot.dbesystem.com/>.

Section 7 - Overconcentration

(Ref: 49 CFR §26.33)

If ABQ RIDE determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, ABQ RIDE will devise measures to address the overconcentration. These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs and other appropriate measures.

If ABQ RIDE determines that overconcentration exists, such determination and the proposed measures to address the determination, shall be approved by FTA prior to implementation of the proposed remedial measures.

Section 8 - Business Development Programs

(Ref: 49 CFR §26.35)

ABQ RIDE has not elected to establish a business development program or mentor-protégé program.

Section 9 - Monitoring and Enforcement Mechanisms

(Ref: 49 CFR §26.37)

Monitoring

ABQ RIDE monitors work sites and cross references observations by reviewing contract documents to certify DBE firms are performing the work they were contracted to complete. ABQ RIDE uses a Commercially Useful Function (CUF) interview form to review contracting records and monitor project worksites to certify that work committed to DBEs at contract award or subsequently is actually performed by DBEs. ABQ RIDE will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Prime contractors on federally-assisted projects agree to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract receives from ABQ RIDE. The prime contractor, design consultant and other consultant will be required to submit appropriate payment documentation on form A-644 to the ABQ RIDE project manager. ABQ RIDE will periodically require the prime contractors provide to ABQ RIDE copies of invoices from DBE subcontractors to the prime. ABQ RIDE will then use those invoices to verify the accuracy of the A-644 forms and to clearly communicate with the DBE subcontractors as the prime's pay application is processed to verify that payment is received within the required 30 days of payment to the prime.

Enforcement

ABQ RIDE has available several remedies to enforce the DBE requirements contained in its procurement solicitations and contracts. Procurement Solicitations shall include the required DBE clauses and certifications and if the response does not contain certification of DBE Requirements, the proposal will be deemed non-responsive. Once a contract is issued, if the contractor does breach the contract based upon DBE Requirements, ABQ RIDE may terminate the agreement pursuant to the terms of the contract. Appropriate ABQ RIDE personnel shall coordinate the monitoring and enforcement of the DBE Program with all recipients including contractors, consultants, and subconsultants.

ABQ RIDE requires inclusion of the DBE clauses in all agreements and contracts with recipients of the Federally-assisted agreements. ABQ RIDE shall enter into an agreement with all recipients which will bind such recipients to the requirements of the DBE Program. Appropriate ABQ RIDE personnel shall coordinate the monitoring and enforcement of the DBE Program with all recipients including contractors, consultants, or other program areas.

ABQ RIDE will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that 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 49 CFR Part 26.109. The federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, 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 Part 31
3. Prosecution pursuant to 18 USC 1001

4. ABQ RIDE will consider similar action under its own legal authorities, including responsibility determinations in future contracts and any other legal and contract remedies available to ABQ RIDE in the event of non-compliance with the DBE regulation and related provisions by a participant in ABQ RIDE procurement activities

ABQ RIDE will consider similar action under City of Albuquerque legal authorities, including responsibility determinations in future contracts.

Section 10 - Fostering Small Business Participation

(Ref: 49 CFR §26.39)

ABQ RIDE has implemented a race-neutral, Small Business Participation element into its DBE Program. This element includes steps to eliminate obstacles for small business participation and create a level playing field for small businesses to compete fairly for DOT-assisted contracts.

For purposes of implementing this element, ABQ RIDE will utilize the existing “small business” program as provided for within the City of Albuquerque’s Public Purchase Ordinance (COA-PPO §5-5-17). As outlined within the ordinance, ABQ RIDE will utilize the following small business definition and verification process:

- A small business is defined as: “a business which employs an average of fewer than 50 full-time employees in a calendar year” (COA-PPO §5-5-17(B)(4))

The status of small businesses under this program element will be verified by the City’s Purchasing Division by requesting a business’s quarterly IRS Form 941 or other documentation acceptable to the City, from which the total number of full-time employees can be determined and verified (COA-PPO §5-5-17(B)(4)). Each small business must also meet the definition of a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it ([13 CFR part 121](#)) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b). The City’s small business definition is narrow enough that those businesses would also meet the Small Business Act size thresholds.

Each fiscal year, the City of Albuquerque strives to award to small businesses the equivalent of 10% of the total value of City purchases for goods and services, based on the prior fiscal year (refer to COA-PPO §5-5-17(D)). This is facilitated through a 5% preference in the recommendation of award that is allowed for small businesses that is not based on race and or gender. The use of this strategy in contract awards will serve to enhance capacity and participation by small businesses in government contracts.

ABQ RIDE will ensure that a reasonable number of contracts are of a size that small businesses can reasonably perform are made available during each fiscal year. This includes unbundling of contract requirements that may preclude small business participation in procurements as prime contractors. ABQ RIDE will reach out to small businesses through stakeholder organizations to encourage their participation.

ABQ RIDE will explore other steps to increase small business participation that may include, but are not limited to: race-neutral small business set-asides, requiring identification of sub-contracting possibilities on large contracts, requiring prime contractors to identify small business sub-contracts on large procurements, and business development opportunities.

Chapter 3 – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 1 - Use of Set-asides or Quotas

(Ref: 49 CFR §26.43)

ABQ RIDE does not use set-asides or quotas for DBE participation in the administration of this DBE program.

ABQ RIDE may award preference points for small and veteran-owned businesses, as administered by the Purchasing Division under the Public Purchases Ordinance (Albuquerque Ordinance 5-5) and DBE Program element Chapter 2, Section 10 Fostering Small Business Participation. Preferences for businesses based on race or gender will not be offered.

Section 2 - Setting Overall Goals

(Ref: 49 CFR §26.45)

A description of the 2-step methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this Program. This section of the Program will be updated every three years, while attainment will be reviewed annually.

In accordance with Section 26.45(f) ABQ RIDE will submit its overall goal to DOT on August 1 every three years. Before establishing the overall goal each period, ABQ RIDE will consult with the State of New Mexico Department of Transportation to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ABQ RIDE's efforts to establish a level playing field for the participation of DBEs.

Following this consultation with NMDOT, ABQ RIDE will provide notice to organizations including but limited to minority, women's and general contractor groups, community organizations, and other officials or organizations. ABQ RIDE will also publish on its website a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at ABQ RIDE's principal office for 30 days following the date of the notice, and informing the public that ABQ RIDE will accept comments on the goals for thirty days (30) from the date of the notice. ABQ RIDE will strive to have the notice issued by June 1 of each goal submittal cycle.

ABQ RIDE's overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

ABQ RIDE will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 3 - Goal Setting and Accountability

(Ref: 49 CFR §26.47)

ABQ RIDE will exercise good faith efforts to achieve the state goal in compliance with 49 CFR Part 26. Whenever ABQ RIDE cannot achieve its goal, ABQ RIDE will not be penalized or treated by USDOT as being in noncompliance with 49 CFR Part 26 so long as ABQ RIDE administers an approved DBE Program in good faith.

If ABQ RIDE does not meet or exceed the overall goal applicable to a fiscal year, it will analyze in detail the reasons for the difference between the overall goal and its awards and commitments in that fiscal year and establish specific steps and milestones to correct the problems identified in its analysis to enable it to meet fully its goal for the new fiscal year. ABQ RIDE will consider the types of projects anticipated and compare that to the types of projects awarded over each fiscal year. If the anticipated and actual awards are relatively similar, ABQ RIDE will investigate other reasons there may have been lower DBE participation, and develop a strategy to address the gap based on what the cause of the shortfall appears to be. This process could involve interviewing DBEs to uncover any challenges they are encountering and if ABQ RIDE can provide any support in addressing the issues. ABQ RIDE will document, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under this section for approval. The shortfall analysis document will be available for FTA review and will be retained in ABQ RIDE records for three years. ABQ RIDE will comply with any conditions or corrective actions imposed by FTA.

Section 4 - Transit Vehicle Manufacturers Goals

(Ref: 49 CFR §26.49)

ABQ RIDE will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, ABQ RIDE 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. ABQ RIDE will submit to the FTA, via FTA's online reporting form, all TVM purchase information within 30 days of making an award.

Non-TVM vehicles will be included in the triennial DBE goal setting document.

Section 5 - Race-Neutral & Race-Conscious Participation

(Ref: 49 CFR §26.51)

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 of this Program. ABQ RIDE is continuing to primarily use race-neutral means, consisting of promoting the use of DBE's and small businesses during pre-bid conferences, providing notice of bidding opportunities to potential DBE-representing organizations (identified in Attachment 4 and updated as new information is available and/or as organizations request), and unbundling large projects but will consider the use of contract goals as necessary to meet the overall DBE goal.

ABQ RIDE will evaluate upcoming contracting opportunities to determine if race-neutral means, based on past experience, are likely to achieve the DBE goal for each year and goal setting period. This section of the program will be updated every three years when the DBE goal calculation is updated, via the DBE Goal Report.

ABQ RIDE will also consider additional race-neutral means to facilitate DBE participation, as identified in CFR 29 Part 26.51.

Section 6 - Contract Goals

(Ref: 49 CFR §26.51)

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

ABQ RIDE will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. ABQ RIDE will not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

ABQ RIDE will express our contract goals as a percentage of the total amount a DOT-assisted contract.

Section 7 - Good Faith Efforts Procedures

(Ref: 49 CFR §26.53)

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

The DBELO shall be 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.

ABQ RIDE will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

ABQ RIDE treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information, no later than 5 days after a bid opening:

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

Administrative reconsideration (26.53(d))

Within thirty (30) days of being informed by ABQ RIDE that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Transit Director – ABQ RIDE
100 1st St. SW
Albuquerque, NM 87102
(505) 724-3100

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

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

Design-Build Contracts (26.53(e))

In a design-build contracting situation, in which ABQ RIDE solicits proposals to design and build a project with minimal-project details at time of letting, ABQ RIDE will set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal instead of the specific list of DBE subcontractors required for other procurements. To be 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 amount) 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, ABQ RIDE will monitor performance of the design-build contractor to evaluate whether it is using good faith efforts to comply with the OEPP and schedule. ABQ RIDE 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.

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

ABQ RIDE will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. ABQ RIDE will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation, and ABQ RIDE will only allow a prime contractor to terminate or substitute a DBE subcontractor if ABQ RIDE concurs in writing that the prime contractor had good cause as defined in § 26.53(f).

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

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

Sample Bid Specification:

The following information shall be included in procurement solicitations and contract documents:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of ABQ RIDE to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE participation goal [of ____% percent has] / [has not] been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (ABQ RIDE DBE Program Attachment 6), to meet the contract goal for DBE participation in the performance of this contract.

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

Section 8 - Counting DBE Participation

(Ref: 49 CFR §26.55)

ABQ RIDE will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Chapter 4 – CERTIFICATION STANDARDS

Section 1 - Unified Certification Programs

(Ref: 49 CFR §26.81)

ABQ RIDE is the member of a Unified Certification Program (UCP) administered by the State of New Mexico Department of Transportation (NMDOT). The UCP will meet all requirements of this section. ABQ RIDE will use and count for DBE credit only those DBE firms certified by NMDOT.

For more information about the UCP, how to certify, and other program requirements, visit:

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

The most up-to-date DBE directory can be found at <https://nmdot.dbesystem.com/>.

Section 2 - Certification Process

(Ref: 49 CFR §26.73)

As part of the Uniform Certification Program (UCP) administered by the State of New Mexico Department of Transportation (NMDOT), ABQ RIDE will rely on the NMDOT's 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.

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

NMDOT Disadvantaged Business Enterprise (DBE) Liaison
Tisha Clark
1570 Pacheco St. Suite A-10
Santa Fe, NM 87505
(505) 490-1175

Section 3 - Procedures for Certification Verification

(Ref: 49 CFR §26.83)

ABQ RIDE will review the NMDOT Disadvantaged Business Enterprise System (B2GNOW Diversity Management System) to verify that all DBEs in a contract are currently certified.

Chapter 5 – COMPLIANCE AND ENFORCEMENT

Section 1 - Information, Confidentiality, Cooperation

(Ref: 49 CFR §26.109)

ABQ RIDE will safeguard from disclosure to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

Monitoring Payments to DBEs

ABQ RIDE will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of ABQ RIDE or DOT. This reporting requirement also extends to any certified DBE subcontractor.

ABQ RIDE requires contractors to report payments and payment dates to any certified DBE subcontractor. We will periodically verify the accuracy and that payments were made within thirty (30) days. We will also monitor that the DBE's are performing the work they are contracted to.

ABQ RIDE will perform interim reviews of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

See also Chapter 2, Section 9: Monitoring and Enforcement.

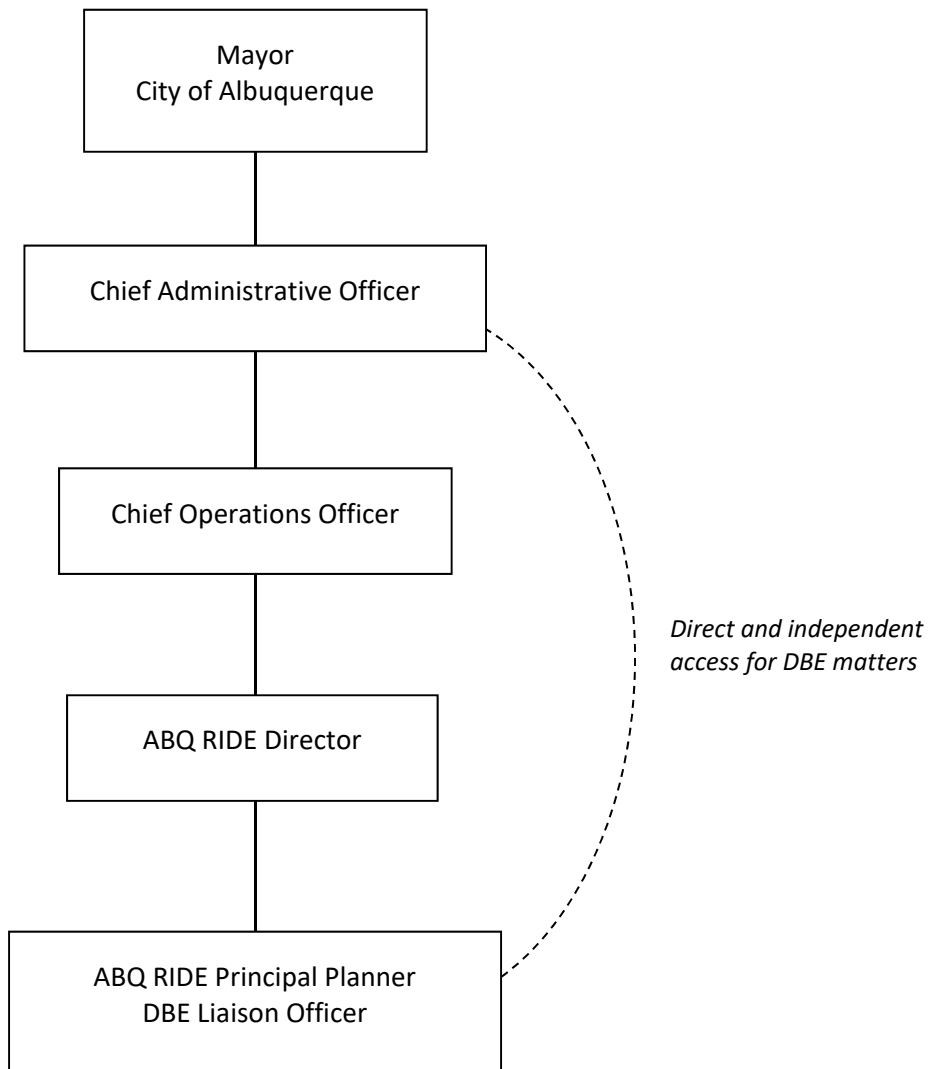
ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 NMDOT DBE Directory & Certification Information
- Attachment 3 Regulations: 49 CFR Part 26
- Attachment 4 Overall Goal Calculation Methodology
- Attachment 5 Required Contract Assurances and Forms
- Attachment 6 Good Faith Efforts Policy
- Attachment 7 Forms

Attachment 1

Organizational Chart

City of Albuquerque – ABQ RIDE



Attachment 2

DBE Directory & Certification Information

NMDOT manages the DBE certification standards, procedures, denials and removal of DBE's eligibility, and certification appeals. For the most up-to-date DBE forms for Certification Application and the Annual No Change Affidavit access:

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

For the most up-to-date DBE Directory, as certified by NMDOT, access:

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

Attachment 3

Regulations: 49 CFR Part 26

For an electronic version, see: <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

Attachment 4

Overall Goal Calculation Methodology

(Ref: 49 CFR §26.45)

ABQ RIDE utilizes the following DBE Goal Calculation methodology and breakout of estimated Race-Neutral & Race Conscious Participation. The most current DBE Goal Report is incorporated by reference into this document. To find a copy of the most current DBE Goal Report, visit: <https://www.cabq.gov/transit/opportunities/lets-do-business/disadvantaged-business-enterprise>

Market Area

After examining relevant available data, ABQ RIDE identified its DBE local market area based upon the following factors:

- The area where the substantial majority of the contractors and subcontractors with which ABQ RIDE does business are located
- The area in which ABQ RIDE spends the substantial majority of its contracting dollars.

Based on these criteria, ABQ RIDE's the market area is considered to be:

- Bernalillo County
- Sandoval County
- Torrance County
- Valencia County
- Santa Fe County
- Dona Ana County

Determining Base Availability Figure

ABQ RIDE determined the base figure for the relative availability of DBEs using of the NMDOT DBE Directory to identify "ready, willing, and able to participate" DBEs in our market area and compared these numbers to Census Bureau Data that tracks the overall number of businesses performing each type of work.

The New Mexico Unified Certification Program (UCP) is the official statewide database of DBE firms certified to conduct business throughout New Mexico. The UCP provides the information necessary to determine the number of ready, willing, and able DBE firms that could potentially participate in upcoming contract opportunities.

The U.S. Department of Commerce, Bureau of the Census, County Business Patterns for New Mexico,) provides data necessary to determine the total number of all firms (DBEs and non-DBEs) ready, willing and able to bid on contracts.

A. Establishment of Three-Year DBE Goal Methodology

1. DBE Directory and Census Bureau Data

To determine the number of DBE firms, ABQ RIDE will review, on an triennial basis review the New Mexico UCP database for currently certified DBE firms by NAICS code expertise. The number of firms will be narrowed to include firms that are located and/or willing to do business within the market area. All of the certified DBE firms in this these classifications in the statewide database were considered, in determining the Step 1 Base Figure for DBE availability.

To determine the number of all firms (DBEs and non-DBEs) in the market area that are ready, willing and able to bid on the Transit projects, ABQ RIDE reviews the most recent Census County Business Patterns for New Mexico. These data sets will be utilized because they closely match the location of the firms that have previously conducted business for ABQ RIDE.

2. Step 1: Base Figure

The chart below shows the calculation of the base figure for the three-year period.

The method used to calculate the relative availability of DBEs for Step 1 is in accordance with 49 CFR Part 26.45 (c) (1), DBE Directories and Census bureau Data.

Project(s)	NAICS Description	Total DBE's	Total All Firms	DBE Relative Availability	Project Federal \$	Projected DBE's
Total Projected FTA						
Overall Availability					\$00,000,000	%

B. Base Figure Adjustments

Step 2 of the availability is to examine all evidence in the market area to determine what adjustment, if any, is needed to the base figure to reflect actual DBE availability (Section 26.45 (d)).

ABQ RIDE has determined that the Census data and the UCP DBE database represent a realistic number of contractors that could potentially bid on these projects, so no adjustment is needed.

Race-Neutral Projections

A. Summary of Race-Neutral Methods of Achieving DBE Participation

The regulations require that the maximum feasible portion of the DBE overall availability be achieved by using race-neutral means (Section 26.51), and that ABQ RIDE include a projection of the overall availability of DBE effort to be met through race-neutral means. Race-neutral means making efforts to ensure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work they might otherwise perform themselves; and providing technical assistance, communications programs and other support services to facilitate consideration of DBEs and other small businesses.

B. Race Neutral Methods of Overall Annual Goal Achievement

The regulations require that a U. S. Department of Transportation (DOT) recipient utilize contract-specific goals, only after it determines either that it cannot meet the overall annual DBE goal otherwise, or that there is documented evidence of a disparity between DBE availability and contracting dollars the recipient receives. Based on this guidance, ABQ RIDE will utilize race-neutral methods of achieving DBE participation.

ABQ RIDE will adjust the estimated breakout of race-neutral and race-conscious ABQ RIDE participation as needed to reflect actual ABQ RIDE participation and track and report race-neutral and race-conscious participation separately.

Public Participation

A. Consultation

For each goal setting period, ABQ RIDE solicits input on the goal-setting methods and resulting goal from minority, women's and small business groups that could have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. The consultation included directly contacting by email and phone organizations that may represent DBEs or potential DBEs, including but not limited to:

- African-American Greater Albuquerque Chamber of Commerce
- Albuquerque Hispano Chamber of Commerce
- Albuquerque Independent Business Alliance
- American Indian Chamber of Commerce of New Mexico
- Asian American Association of New Mexico
- Associated General Contractors of New Mexico

- National Association of Women Business Owners
- New Mexico Black Chamber of Commerce
- New Mexico International Trade Alliance
- New Mexico Minority Business Development Agency (NMBDA) Business Center
- New Mexico Native American Business Enterprise Center
- New Mexico Office of African American Affairs
- New Mexico OUT Business Alliance
- New Mexico Small Business Development Center
- Office of Equity and Inclusion (City of Albuquerque)
- Women in Construction New Mexico
- Women's Economic Self-Sufficiency Team (WESST)
- ULI CREW

ABQ RIDE offers to hold a consultation conference and/or one-on-one meetings with representatives from the above-mentioned professional organizations in which the method for calculating the goal was described, the forecasted contracting opportunities were reviewed, and methods for encouraging and assisting DBE's in participating in ABQ RIDE's procurement opportunities were discussed.

B. Public Notice

The proposed goal and rationale will be advertised as available for inspection in the Albuquerque Journal, 7777 Jefferson NE, Albuquerque, NM 87109, (505) 823-3800.

Interested persons may submit written comments to the DBELO, ABQ RIDE, City of Albuquerque, 100 1st St. SW, Albuquerque, NM 87102.

NOTICE TO PERSONS WITH DISABILITIES: If you require special assistance to participate in this review process, TTY users can contact the New Mexico Relay Network at 1-800-659-8331.

Attachment 5

Required Contract Assurances and Forms

Each contract ABQ RIDE signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

Disadvantaged Business Enterprise

The Contractor is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by *Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*.

The national goal for participation of Disadvantaged Business Enterprise (DBE) is 10%. The City's overall goal for certified DBE participation is ____%. A list of certified Disadvantaged Business Enterprises can be obtained from the New Mexico Department of Transportation, Construction and Civil Rights Bureau, 1570 Pacheco St. Suite A10, Santa Fe, New Mexico 87505 or by visiting the Bureau's website at <https://nmdot.dbesystem.com/>.

Non-discrimination. 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 other such remedy as ABQ RIDE deems appropriate, which may include, but is not limited to:

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

Good Faith Efforts. The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of ABQ RIDE to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE.

1. A DBE participation goal [of ____% percent] [has / has not] been established for this contract. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (ABQ RIDE DBE Program Attachment 6), to meet any applicable contract goal for DBE participation in the performance of this contract.
2. The bidder/offers will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the

work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Reporting. The Contractor will be required to report its DBE participation obtained throughout the period of performance.

Substitutions. The Contractor must promptly notify the City whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City.

Prompt Payment. The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract receives from ABQ RIDE. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ABQ RIDE. This clause applies to both DBE and non-DBE subcontracts.

1. The prime contractor, design consultant and other consultant will be required to submit appropriate payment documentation on form A-644 to the ABQ RIDE project manager. A prime contractor, design consultant or other consultant shall be required to fully document any alleged disputes with its subcontractors or subconsultants. The prime contractor, design consultant, or other consultant shall ensure that all situations in which regularly scheduled payments are not made to subcontractors or subconsultants are reported to ABQ RIDE.
2. If the prime contractor, design consultant, or other consultant is found to be in violation or fails to abide by the prompt payment mechanisms, ABQ RIDE shall impose sanctions as stated under paragraph 30 Compliance Procedures. The prime contractor, design consultant, or other consultant shall further be required to release retainage payments to the subcontractors or subconsultants within thirty (30) calendar days of satisfactory completion of the entire subcontractor's or subconsultant's work and final payment of such work by ABQ RIDE.

Attachment 6

Good Faith Efforts Policy

(Ref: Appendix A to 49 CFR Part 26—Guidance Concerning Good Faith Efforts)

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith effort showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. (i) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBE that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of

- work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.
- (ii) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- D.
- (i) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (ii) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 - (iii) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a

bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E.
 - (i) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract participation goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be constructed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
 - (ii) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit 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 to review whether DBE prices were substantially higher; and the contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under this rule.

- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts except in design-build procurement.

Attachment 7

Forms & Procedures

A. ABQ RIDE Administrative Forms & Procedures

1. Commercially Useful Function Interview Form (Form A-1239)
2. Commercially Useful Function Instructions
3. Uniform Report of DBE Commitments/Awards and Payments (Form 4630)
4. Uniform Report Instructions & Procedures

B. Contractor's Forms

1. DBE Participation & Payment Tracking (based on Form A-644)
2. Demonstration of Good Faith Efforts
 - i. Form 1 - DBE Utilization form and
 - ii. Form 2 - Letter of Intent forms
3. Race Conscious Measure Project (Form A-585)