Disadvantaged Business Enterprise Plan (DBE)

For Projects Funded Through

the Federal Transit Administration (FTA)

FY 2012-13

CITY OF BRAWLEY

DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26

POLICY STATEMENT

Section 26.1, 26.23 **Objectives/Policy Statement**

The City of Brawley 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 Brawley has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Brawley has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Brawley to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also our policy:

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

Yazmin Arellano-Torres has been delegated as the DBE Liaison Officer. In that capacity, Yazmin Arellano-Torres 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 Brawley in its financial assistance agreements with the Department of Transportation.

The City of Brawley has disseminated this policy statement to the City Council and all of the relative components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform, or are anticipated to perform work for our organization on DOT assisted contracts. This distribution is accomplished through 1. Adoption of the program by the City Council; 2. Publication available to all interested parties via the City's website; 3. Inclusion in all relative competitive bid documents.

Rosanna Bayan Moore
City Manager

8/3/12
Date

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Brawley through the Imperial County Transportation Commission (ICTC) is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The City of Brawley will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The City of Brawley 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 Brawley will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will report DBE participation on a quarterly basis, using DOT Form 4630 or through the FTA TEAM website. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

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

We will collect this information in the following ways: requiring prime bidders to report the names/addresses and possible other information, of all firms who quote to them on subcontracts, providing a notice in solicitations and post it on the City website.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

> The City of Brawley 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 Brawley 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 Brawley'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 City of Brawley of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Yazmin Arellano-Torres, P.E., City Engineer/Public Works Director
City of Brawley
180 S. Western Ave.
Brawley, CA 92227
760-344-5800
yarellano@brawley-ca.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of Brawley complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager of the City of Brawley concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 0 to assist in the administration of the program. 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. Works with all components within the City of Brawley to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. 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.
6. Analyzes the City of Brawley's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager/City Council on DBE matters and achievement.
9. Participates in pre-bid meetings.
10. Provides DBEs with information and assistance in preparing bids.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process in California.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the City of Brawley's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the City of Brawley 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. We have made the following efforts to identify and use such institutions: research the credit unions and commercials banks in the community through on site visits and website reviews.

To date we have identified the following such institutions: None

Section 26.29 Prompt Payment Mechanisms

The City of Brawley 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 30 days from the receipt of each payment the prime contract receives from the City of Brawley. The prime contractor agrees further to return retainage payments to each subcontractor within 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 the City of Brawley. This clause applies to both DBE and non-DBE subcontracts.

Any failure to comply with this section by the prime contractor shall be considered as a breach of the contract, subject to the provisions of the agreement. In addition, the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractors ensures that the subcontractors are promptly paid for the work that they have performed.

Section 26.31 Directory

The City of Brawley maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's 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. We revise the Directory annually.

We make the Directory available online at http://www.dot.ca.gov/hq/bep/find_certified.htm.

Further information may be found about California's Uniform Certification Program at http://www.dot.ca.gov/hq/bep/ucp.htm

Section 26.33 Overconcentration

The City of Brawley has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Brawley has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation 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 26.109.
2. We will consider similar action under out own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished via a reporting mechanism
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The City of Brawley does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

A description of the 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 annually.

In accordance with Section 26.45(f) the City of Brawley will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, the City of Brawley will consult with the Chambers of Commerce and CALTRANS Local District Offices to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Brawley's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational are available for inspection during normal business hours at our office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be available on the Commission's website and the local newspaper of general circulation. We, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

We 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 26.49 Transit Vehicle Manufacturers Goals

The City of Brawley will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Brawley may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated annually when the goal calculation is updated.

Section 26.51(d-g) Contract Goals

The City of Brawley will use contract goals to meet any portion of the overall goal. The City of Brawley 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.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of

contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of Good Faith Efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are located in Appendix A to 49 CFR Part 26.

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

Yazmin Arellano-Torres, P.E., City Engineer/Public Works Director
City of Brawley
180 S. Western Ave.
Brawley, CA 92227
760-344-5800
yarellano@brawley-ca.gov

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

Information to be submitted (26.53(b))

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

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

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

Administrative reconsideration (26.53(d))

Within 10 days of being informed by the City of Brawley 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:

Rosanna Bayon Moore, City Manager
City of Brawley
383 Main St.
Brawley, CA 92227

760-351-3048
rbmoore@brawley-ca.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 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.

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

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

In this situation, we 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, the City of Brawley 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 requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of Brawley to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.
>
> The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City of Brawley 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. We will make our certification decisions based on the facts as a whole.

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

CALTRANS Civil Rights
ATTN: Certification Unit
1823 14th Street
Sacramento, Ca. 95811
(866) 810-6346
http://www.caltrans.ca.gov/hq/bep/business_forms.htm

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The City of Brawley adopts the California Unified Certification program (CUCP) procedures administered by the Certifying agencies of the CUCP. The UCP meets all of the requirements of this section. The following is a description of the UCP (as provided on the CUCP website located at http://www.californiaucp.com/index.html)

> "The California Unified Certification Program (CUCP) went into effect on January 1, 2002. It is a one stop shopping certification procedure that eliminates the need for Disadvantaged Business Enterprises (DBE) firms to obtain certifications from multiple agencies within the State.
>
> The CUCP is charged with the responsibility of certifying firms and compiling and maintaining a single Statewide database of certified DBEs, pursuant to 49 CFR Part 26. The database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all DOT assisted grantees in California.
>
> The CUCP has established two regional DBE certification clusters throughout the State, designated by geographical boundaries to effectively facilitate Statewide DBE certification activities.
>
> The CUCP certifying agencies are responsible for certifying DBE firms. It is not necessary to apply for DBE certification at more than one agency. If your firm meets the general criteria for DBE certification as provided on the Application package, please submit your completed application, along with the requested documentation to one of the Certifying agencies serving the County where your firm has its principal place of business. "

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will review the eligibility of DBEs, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than five years from the most recent certification date of each firm.

For firms that we have reviewed and found eligible under part 26, we will again review their eligibility every five years. These reviews will include the following components: filing out a new application, performing on site visits in the City of Brawley local area, and reviewing work history, qualifications and equipment of the firm.

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

To the extent as required by the CUCP, we require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with the CUCP's application for certification.

We also require all owners of all DBEs to submit, on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

> I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [*name of DBE*]'s application for certification, except for any changes about which you have provided written notice to the ICTC under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed $16.6 million.

We require DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

We will notify all currently certified DBE firms of these obligations. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If the CUCP denies a firm's application or decertify it, it may not reapply until 12 months have passed from the action.

Section 26.87 Removal of a DBE's Eligibility

In the event the CUCP proposes to remove a DBE's certification, we will follow procedures consistent with 26.87.

Section 26.89 Certification Appeals

Any firm or complainant may appeal the CUCP decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose 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, we 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

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

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

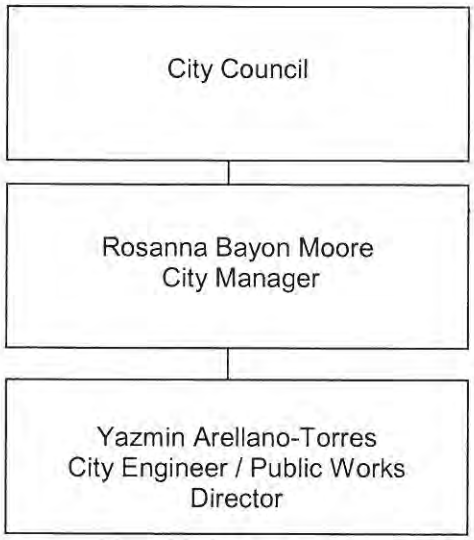
ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Forms for Demonstration of Good Faith Efforts
Attachment 7	Certification Application
Attachment 8	Procedures for Removal of DBE's Eligibility
Attachment 9	Regulations: 49 CFR part 26

Attachment 1

Organizational Chart

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



Attachment 2

DBE Directory

See the CUCP directory, found at http//www.dot.ca.gov/ucp/GetLicenseForm.do

The City of Brawley encourages prime contract bidders to search this directory when seeking subcontractors that are certified as a DBE.

Attachment 3

Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action pursuant to California Civil Code S 3300, et. seq:
3. Any other enforcement mechanism in law or equity allowable in California

In addition, 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.

Attachment 4

The City of Brawley Methodology for adopting an FY 2012-13 DBE goal for FTA purposes

Pursuant to Section 49 CFR Part 26, The City of Brawley presents the following information as it relates to the development of the City of Brawley Methodology for adopting a FY 2012-13 DBE goal for FTA purposes.

Anticipated City of Brawley contracting opportunities during FY 2012-13 utilizing FTA funds:

1. One (1) Contract anticipated for construction

   Total FY 12-13 contract cost = $1,224,815

   This contract will construct the City of Brawley Transit Transfer Terminal.

Unique factors affecting the development of the DBE Goal for FY 2012-13

1. Recognition and local knowledge that there is limited DBE participation in the immediate geographic area. The area is 84 miles to the south of Riverside and 120 miles to the east of San Diego counties, which represent the closest populated areas. The market area, or region, therefore has been expanded to include the Counties of Imperial, Riverside and San Diego Counties.
2. The DBE firms certified by the California Unified Certification Program with the most appropriate NAICS classification code
3. There may exist opportunities for the prime contractor to utilize outside firms to provide needed services.

Step 1 – Development of the Base Goal Figure

In order to determine an overall goal the first step is to determine a base figure:

Potential funding available for the contacting opportunities

Table 1	Amount of DOT Funding		
NAICS CODE	Description of the Work	Amount of DOT funds	Percent of Total Weight
221310	Water Supply and Irrigation Systems	$ 11,733.00	0.0096
236220	Commercial and Institutional Building Construction	$ 85,000.00	0.0694
237110	Water and Sewer Line and Related Structures Construction	$ 56,825.00	0.0464
237310	Highway, Street, and Bridge Construction	$ 659,015.00	0.5380
238210	Electrical Contractors and Other Wiring Installation Contractors	$ 223,838.00	0.1828
238910	Site Preparation Contractors	$ 85,000.00	0.0694
484110	General Freight Trucking, Local	$ 11,404.00	0.0093
561730	Landscaping Services	$ 92,000.00	0.0751
	TOTALS	$ 1,224,815.00	100%

The number of DBE and non DBE firms ready, willing, and able to bid on contracting opportunities

Table 2	Relative Availability of DBEs			
NAICS CODE	Description of the Work	Available DBEs in the Region	Number of all Firms Available	Relative Availability
221310	Water Supply and Irrigation Systems	7	43	0.163
236220	Commercial and Institutional Building Construction	25	678	0.037
237110	Water and Sewer Line and Related Structures Construction	22	158	0.139
237310	Highway, Street, and Bridge Construction	16	137	0.117
238210	Electrical Contractors and Other Wiring Installation Contractors	11	1190	0.009
238910	Site Preparation Contractors	15	481	0.031
484110	General Freight Trucking, Local	11	401	0.027
561730	Landscaping Services	6	1391	0.004
	TOTALS	113	4479	

Local Potential Subcontracting Opportunities

Table 3 Step One - Base Goal Development				
NAICS CODE	Description of the Work	Weight	Relative Availability	Weighted Base Figure
221310	Water Supply and Irrigation Systems	0.0096	0.163	0.0016
236220	Commercial and Institutional Building Construction	0.0694	0.037	0.0026
237110	Water and Sewer Line and Related Structures Construction	0.0464	0.139	0.0064
237310	Highway, Street, and Bridge Construction	0.5380	0.117	0.0629
238210	Electrical Contractors and Other Wiring Installation Contractors	0.1828	0.009	0.0016
238910	Site Preparation Contractors	0.0694	0.031	0.0022
484110	General Freight Trucking, Local	0.0093	0.027	0.0003
561730	Landscaping Services	0.0751	0.004	0.0003
	TOTALS	100%		7.8%

Step 2: Adjustments to the Base DBE relative Availability Figure

Adjustments to the base figure goal may be necessary and justified for a variety of reasons including: lower or higher than expected past participation by DBE firms, additional evidence from disparity studies, etc.

Table 4 Historical DBE Participation			
FFY		Goals	Annual Participation
2012	Transit Station Design	4%	8.6%

The median participation FFYs 2013 and Step 2 Goal

DBE Median Participation (2013)	8.60%
Step One Base Goal	7.80%
Total	16.4%
Divided by 2 =	2
	8.20 %

FY 2012-13 DBE Goal = 8.2%

Attachment 5

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

The City of Brawley will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation as required in Section 26.51(a). Planned outreach efforts by the City of Brawley are all race/gender neutral and it is anticipated that the City of Brawley will accomplish its DBE goal solely through race/gender neutral means.

The City of Brawley will use the following race neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentations of bids, quantities, specifications and delivery schedules in a manner that facilitate DBE and other small businesses participation. i.e unbundling large contracts to make them more accessible, requiring large contractors to subcontract portions of the work effort
2. Reducing bonding requirements when possible
3. Providing technical assistance and other services
4. Providing information and communications in a bilingual format
5. Coordinating with resource agencies i.e. workforce development, small business alliance, chambers of commerce and economic development centers

Attachment 6

Forms for Demonstration of Good Faith Efforts

[*Forms should be provided as part of the solicitation documents.*]

PROVIDERS LIST OF PARTICIPATING FIRMS

PROJECT NAME _____ DATE _____

PRIME PROVIDER NAME/ADDRESS	DBE?	FIRM AGE/YEARS IN BUSINESS	ANNUAL GROSS $$ REVENUE	WORK TYPE*
SUBCONTRACTORS				

*P = PROFESSIONAL CONSULTING SERVICES, C = CONSTRUCTION, S = SUPPLIES, E = EQUIPMENT, O = OTHER (describe)

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

DBE/ NON-DBE PARTICIPATION

PROJECT NAME _____ DATE _____

SUBCONTRACTOR NAME/ADDRESS	WORK TO BE PERFORMED		ESTIMATED $$ PARTICIPATION	PERCENT OF TOTAL CONTRACT VALUE

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

UNAVAILABILITY CERTIFICATION
DISADVANTAGED BUSINESS ENTERPRISES

Project _____

Provider's Name _____

In order to demonstrate a good faith effort to utilize Disadvantaged Business Enterprises, Provider's who cannot meet their DBE participation goals must respond to either Item A or Item B below:

ITEM A

Name and Address of Firms Contacted	DBE	Dates Contacted	Method of Contact	Results

ITEM B

There exists no opportunity for subcontracting as part of this project. It is the general practice of _____
(Name of Bidder)

to perform all work of this nature solely with its own work force and to do otherwise would _____

I, _____, _____ of
(Name) (Title)

_____, do hereby certify that the above information is true and correct, and that
(Name of Firm)

I have made a good faith effort as documented in Item A or Item B above to obtain Disadvantaged Business participation in the performance of this contract.

_____ _____
(Signature) (Date)

SUMMARY OF SUBCONTRACT AWARD AND MONTHLY PAYMENTS REPORT

PROJECT NAME: _____ PROVIDER NAME: _____

REPORTING PERIOD: From _____ To: _____

SUBCONTRACTOR NAME/ADDRESS	SUBCONTRACT $$ AMOUNT	DBE?	WORK ASSIGNMENT	DBE DOLLARS COMMITTED

Report prepared by: _____ Signature: _____

Title: _____ Date: _____

Attachment 8

Procedures for Removal of DBE's Eligibility

The City of Brawley is not a certifying agency under the CUCP.

Ineligibility complaints

Any person may file a written complaint alleging that a currently certified firm is not eligible and specifying the alleged reasons why the firm is ineligible. The City of Brawley is not required to accept a general statement or allegation that a firm is ineligible, or an anonymous complaint. The complaint must include information supporting the assertion that the firm is ineligible and should not continue to be certified Complainants identified must be protected as provided in Sec 26.109(b)

The City of Brawley will review its records concerning the firm and any materials provided by the complainant. The City of Brawley may request additional information or conduct any other investigation that the City of Brawley deems necessary.

If the City of Brawley determines that there is reasonable cause to believe that the firm is ineligible, the City of Brawley will provide written notice to the firm that the City of Brawley proposes to find the firm ineligible, setting forth the reasons. If the City of Brawley determines that reasonable cause does not exist, the City of Brawley will notify the complainant and the firm in writing of this determination and the reasons for it. All statement and reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which the reason is based.

Recipient initiated

If based on notifications by the firm of a change in its circumstances or other information that comes to the City's attention, the City of Brawley determines that there is reasonable cause to believe that a currently certified firm is ineligible, the City of Brawley will provide written notice to the firm that the City of Brawley proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive

If the DOT determines that a firm does not meet the requirements for eligibility, the DOT will provide a notice setting forth the reasons for the record with relevant documentation and the City of Brawley may initiate appropriate actions after consultation with the DOT.

Attachment 9

Regulations: 49 CFR Part 26

Please refer to: http//www.fhwa.dot.gov/HEP/49cfr26.htm

Attachment 10

Affidavit(s) of Publication

PROOF OF PUBLICATION
(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Imperial

I am a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk* of the printer of the

IMPERIAL VALLEY PRESS

a newspaper of general circulation, printed and published daily in the City of El Centro, County of Imperial and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Imperial, State of California, under the date of October 9, 1951, Case Number 26775; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

June 15
July 13

all in the year 20 12

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

SIGNATURE

* Printer, Foreman of the Printer, or Principal Clerk of the Printer

Date 7-13 20 12
at El Centro, California.

This space is for the County Clerk's Filing Stamp:

Proof of Publication of:

CITY OF BRAWLEY
Public Notice
Federal Transit Administration DBE Goal for Fiscal Year 2012-2013

NOTICE IS HEREBY GIVEN that in accordance with 49 CFR Part 26.45 (g), the City of Brawley announces a proposed Federal Transportation Administration (FTA) Disadvantaged Business Enterprise (DBE) goal of 8.2 percent for Fiscal Year 2012-2013. This goal represents the percentage of work to be accomplished by certified DBE subcontractors on FTA funded transit projects with the City of Brawley during FY 2012-2013.

The City of Brawley's proposed goal and the methodology used to determine that goal will be available for inspection for thirty (30) days from the date of this notice from 7:30 AM to 5:30 PM Pacific Standard Time, Monday through Thursday and Friday from 7:30 - 4:30 PM at the Office of the City Clerk, 383 Main Street, Brawley, CA 92227. The goal and supporting methodology are also available for review on the City of Brawley's website: www.brawley-ca.gov.

The US Department of Transportation and the City of Brawley will accept comments on this proposed goal for 45 days from the date of this notice. Comments should be forwarded to the City Clerk at the above stated address.

DATED: June 13, 2012

Alma Benavides, City Clerk

PUBLISH: IV Press
June 15, 2012
July 13, 2012

L632

Jn15,Jy13

CITY OF BRAWLEY

ADMINISTRATIVE OFFICES
383 Main Street
Brawley, CA 92227
Phone: (760) 351-3048
FAX: (760) 351-3088

August 3, 2012

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL)
CITY OF BRAWLEY)

3. CONSENT AGENDA

b. Approve Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) Goal for FY 2012-2013.

The council motioned to approve the consent agenda as submitted. m/s/c Campbell/Miranda 5-0

AYES: Campbell, Couchman, Kelley, Miranda, Nava
NAYES: None
ABSTAIN: None
ABSENT: None

DATE: August 3, 2012

Lorena Savala, Deputy City Clerk

COUNCIL AGENDA REPORT
City of Brawley

Meeting Date:	07/31/12
City Manager:	

PREPARED BY: Ana Gutierrez, Contract Manager

PRESENTED BY: Yazmin Arellano-Torres, P.E., Public Works Director

SUBJECT: Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) Plan for Fiscal Year 2012-2013

CITY MANAGER RECOMMENDATION: Adopt the Federal Transit Administration DBE Plan for Fiscal Year 2012-2013 and authorize the City Manager to execute all documentation in relation to this Plan.

DISCUSSION: In accordance with 49 CFR Part 26.45(g), the City of Brawley has developed a Federal Transportation Administration (FTA) Disadvantaged Business Enterprise (DBE) Plan with a goal of 8.2%. The City Council approved advertisement of the draft plan at the June 13, 2012 Special Meeting. The plan was advertised in the Imperial Valley Press on June 15, 2012 and on July 13, 2012. Additional, the plan was placed on the City of Brawley website.

The City of Brawley did not receive any comments regarding the FTA DBE Plan for Fiscal Year 2012-2013 as a result of the publication. Said plan development, the 45 day public comment period, adoption, and implementation are required for utilization of FTA funding.

Staff is requesting the adoption of the City of Brawley FTA DBE Plan and goal of 8.2% for Fiscal Year 2012-2013. This goal represents the percentage of work to be accomplished by certified DBE subcontractors on FTA funded projects within the City of Brawley during FY 20112-13. The funds associated with the construction of the Brawley Transit Transfer Station require adoption of the plan and goal.

FISCAL IMPACT: None at this time.

ATTACHMENTS: Proof of Advertisement, Draft Disadvantage Business Enterprise (DBE) Plan for Project Funded Through the Federal Transit Administration.

Adopted Disadvantaged Business Enterprise (DBE) Plan for FY 2012-2013
m/s/c Campbell/Miranda 5-0