

**Transportation Commission of Colorado  
Disadvantaged Business Enterprises (DBE) Committee  
Agenda  
4201 East Arkansas Avenue; Auditorium  
Denver, Colorado**

**HEATHER BARRY, Chairwoman  
District 4**

**GILBERT ORTIZ, SR.  
District 10**

**KATHY CONNELL  
District 6**

**LES GRUEN  
District 9**

**HERMAN STOCKINGER  
Policy and Government  
Relations Director/Secretary**

**The Chairwoman may change the item sequence or timing**

- 1. Call to Order**
- 2. Center/Program Update – Greg Diehl**
- 3. Approval of Revised ESB Guidelines – Greg Diehl**
- 4. DBE Participation Reports – Greg Diehl**
- 5. Public Comment**
- 6. Adjournment**

# Memorandum

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**Civil Rights and Business Resource Center**  
4201 E. Arkansas Ave., Room 150  
Denver, Colorado 80222



**TO: Transportation Commission DBE Committee**

**FROM: Heidi Bimmerle, Director of Human Resources and Administration**

**RE: DBE Committee February 2013**

**DATE: February 6, 2013**

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## **Center Highlights/Program Update:**

The Civil Rights and Business Resource Center (CRBRC) has new management which has sought to define the role of the CRBRC. The CRBRC has developed a list of the services it provides to the Department and to the community (please see attached). Greg Diehl will present these services to the Committee and highlight advancements by the Center in each area.

## **DBE Committee Action Item - ESB Program Guideline Approval:**

The new ESB program has been in effect for approximately a year and a half. Changes to the ESB Guidelines must be posted for comment and approved by the DBE Committee. Our changes were posted from November – December. They include:

- Replacing the current work code structure with a Primary Industry Code designation, which will simplify the certification process and to make it easier to count ESB participation.
- Syncing up the ESB administrative procedures with the DBE administrative procedures which will streamline the administration of the two programs within our office.
- Clarifying the process for revocation and appeals.
- Remove language related to carryover ESBs, which was only necessary for the transition from the old program to the new program.

The CRBRC seeks the DBE Committee's approval of these modifications.

## **DBE Participation Reports:**

As the Committee is aware, the CRBRC has been working on developing a report to track DBE participation on consultant contracts. The first draft of this DBE Participation Report for Highway Design for October –December 2012 is attached. The report shows 23.96% DBE participation on highway consulting contracts.

Additionally, attached please find the October-December 2012 DBE Participation Report for Highway Construction which shows 12.5% participation. The center has also provided a breakdown of the subcontractor approvals according to work areas. In highway construction and consulting, CDOT is currently exceeding its goal of 10.25%



# Civil Rights & Business Resource Center (CRBRC)

## PART OF THE DIVISION OF HUMAN RESOURCES & ADMINISTRATION (DoHRA)

### MISSION

Promote equal access to & participation in CDOT programs & activities.

### VISION

Provide valued resources that foster a CDOT community of equality.

### 5 CORE CENTER SERVICES

[Goal = Longer term end result desired; *Objective* = Key area of focus in the next 1-2 years]

- 1) **Americans with Disabilities Act (ADA Title II): Promote access to facilities & services for persons with disabilities.**
  - **Goal #1:** Accessible facilities.
    - *Objective:* Lead, implement & sustain CDOT's ADA Transition Plan.
  - **Goal #2:** Compliant & informed subrecipients (local agencies).
    - *Objective:* Increase subrecipient awareness of roles & responsibilities.
  - **Goal #3:** Customer awareness of ADA rights.
    - *Objective:* Communicate valuable information & resources to the public.
  
- 2) **Contractor Compliance: Guide contractors to ensure equal employment opportunity compliance on federally-assisted highway construction contracts.**
  - **Goal #1:** Diverse, trained highway construction workforce.
    - *Objective:* Improve internal OJT program administration and reporting.
    - *Objective:* Align OJT/SS programs to increase trainee placements in industry.
  - **Goal #2:** Compliant & informed contractors.
    - *Objective:* Develop & coordinate a statewide training plan.
  
- 3) **Small Business Programs: Facilitate the participation of small businesses on CDOT transportation projects.**
  - **Goal #1:** DBE Program that provides opportunities, training & resources that enhance DBE competitiveness.
    - *Objective:* Improve transportation contract-related documents, processes & reporting mechanisms.
    - *Objective:* Implement the Civil Rights & Labor module of AASHTO Project.
    - *Objective:* Implement and expand the "Connect2DOT" Program.
  - **Goal #2:** Equality for small businesses in design/engineering consultant selection and performance.

- *Objective:* Improve monitoring and reporting of small business commitments and participation.
- *Objective:* Identify and address barriers to small business participation.
- **Goal #3:** Compliant & informed subrecipients (local agencies).
  - *Objective:* Increase subrecipient awareness of DBE Program responsibilities.
- **Goal #4:** Race-neutral program that promotes small business participation through innovative methods.
  - *Objective:* Implement ESB contract incentives.
  - *Objective:* Implement sustainable ESB restricted project process.

**4) Small Business Certification: Determine the eligibility of firms to participate in the USDOT's DBE Program & CDOT's ESB Program.**

- **Goal #1:** High-quality certification standards & processes.
  - *Objective:* Ensure that only eligible firms enter the DBE & ESB programs.
  - *Objective:* Develop & sustain staff certification expertise.
- **Goal #2:** Transparent and streamlined DBE and ESB application processes.
  - *Objective:* Complete administrative revisions to the ESB Program.
  - *Objective:* Integrate DBE and ESB application processing.
  - *Objective:* Improve the communication of certification processes.

**5) Non-Discrimination (Title VI): Promote equal treatment of & access for all individuals in the CDOT community.**

- **Goal #1:** Nondiscrimination in CDOT programs & services.
  - *Objective:* Lead, implement & sustain strategic Title VI Assessment & Implementation Plans.
  - *Objective:* Integrate Title VI in CDOT planning processes.
- **Goal #2:** Compliant & informed subrecipients (local agencies).
  - *Objective:* Increase subrecipient awareness of roles & responsibilities.
  - *Objective:* Address deficiencies identified in 2012 FTA Title VI Review.
- **Goal #3:** Individual awareness of Title VI rights.
  - *Objective:* Communicate valuable information & resources to the public.

COLORADO DEPARTMENT OF TRANSPORTATION

# ESB Program Guidelines

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Revised February 2013

COLORADO DEPARTMENT OF TRANSPORTATION  
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

**A. Definitions**

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- 1) **Applicability of ESB Program Rule Definitions:** Capitalized terms not defined herein shall have the meaning provided in the ESB Program Rules.
  
- 2) **Additional Definitions:** The following definitions shall apply to the capitalized terms used herein:
  - a. **Application:** Any application documents and supplemental materials necessary for CDOT to determine whether an applicant qualifies for ESB certification.
  
  - b. **Certification Year:** The annual period for which an applicant's certification is valid.
  
  - c. **CRBRC:** Colorado Department of Transportation Civil Rights and Business Resource Center (formally the Center for Equal Opportunity).
  
  - d. **Letter of Certification:** Written notification from CDOT to the applicant stating that the business has been certified as an ESB for the current annual period.
  
  - e. **Level:** The size category to which an ESB has been assigned within the ESB Program.
  
  - f. **Notice of Denial:** Written notification provided by CDOT to the applicant stating that CDOT has determined that the applicant has failed to meet the criteria for certification.
  
  - g. **Notice of Incomplete Application:** Written notification provided by CDOT to the applicant stating that more information is necessary to process the application, the applicant has failed to complete the required Small Business Orientation, and/or any other reason for which CDOT cannot make a determination regarding Certification.
  
  - h. **Notice of Pending Revocation:** Written notification provided by CDOT to an ESB stating that the ESB's Certification is in pending revocation due to the conduct or status of the ESB.
  
  - i. **Primary Industry Classification:** The North American Industry Classification System designation which best describes the primary business of the firm as determined by CDOT based upon the firm's revenue, equipment, expertise and percentage of time and work force dedicated to such business.

**B. Certification**

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- 1) **Application Materials:** Every Business seeking Certification must submit a completed, signed original application, with all supporting materials (originals not required), to the CRBRC. These forms shall be available online and in hard copy at the CRBRC.

COLORADO DEPARTMENT OF TRANSPORTATION  
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

- 2) **Review of the Application:** Upon review of the Application, CDOT will notify the applicant whether the Application is ready for evaluation and, if not, what additional action or information is required. Applications that are incomplete or include little or no supporting documentation may be rejected by CDOT and returned to the applicant.
- 3) **Requests for Information:** The applicant shall respond to all requests for information within fifteen (15) days of such request being made by CDOT. If the applicant does not respond to CDOT within fifteen (15) days, CDOT may, at its discretion, either:
  - a. Make a determination based upon the information provided; or
  - b. Close the application until additional information is provided by the applicant.

When an applicant provides the information after the fifteen (15) days have passed but prior to CDOT making a Determination of Certification, the application will be placed last in the queue for review.

- 4) **Notification of Determination:** Within ninety (90) days of receipt of a complete application, CDOT shall issue a Notice of Denial or Letter of Certification.
- 5) **Primary Industry Classification Determination:** One-half of the size standard established by the SBA for the Primary Industry Classification, but no more than one half of the DBE Program size standard, shall serve as the size standard for determining the firm's eligibility for ESB Certification. The Primary Industry Classification shall be included in the Letter of Certification. The Primary Industry Classification shall also be identified in the Notice of Denial if the denial is based upon exceeding the size standard for participation. The applicant may request a reconsideration of the Primary Industry Classification by written request within fifteen (15) days of notice from CDOT. The written request must include all supporting information the applicant would like considered. The applicant may appeal a denial in accordance with CRS §§ 24-4-104 and 105.
- 6) **Level:** Certified ESBs shall be divided into two categories: Level 1 and Level 2 ESBs.
  - a. For ESBs that are deemed to be primarily engaged in engineering and consulting services, such ESBs shall be certified as Level 1 if it is determined that their size, in accordance with the calculations outlined in the ESB Rules, does not exceed one million dollars average annual gross receipts. For ESBs that are deemed to be primarily engaged in construction work or related dealings, such ESBs shall be certified as Level 1 if it is determined that their size, in accordance with the calculations outlined in the ESB Rules, does not exceed three million dollars average annual gross receipts. All other ESBs shall be considered Level 2 ESBs.
  - b. The Letter of Certification shall state the Level to be assigned to the Business. The applicant may request a reconsideration of the Level by written request within fifteen (15) days of notice from CDOT. The written request must include all supporting information the applicant would like considered. The ESB may appeal the denial in accordance with CRS §§ 24-4-104 and 105.
  - c. The level of the ESB will be listed on the ESB Directory.

COLORADO DEPARTMENT OF TRANSPORTATION  
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

- 7) **Small Business Orientation:** Each applicant must complete a Small Business Orientation in order to become certified. The Small Business Orientation must be completed before submitting an application for Certification, but no more than six months prior to applying for Certification.
- 8) **DBE Certification Synchronization:** CDOT will synchronize the DBE and ESB certification month for any firm currently certified as a DBE at the time of ESB Certification. The initial Certification period may be less than a complete year, as the firm will be required to submit the Renewal of Certification documents at the time of the next DBE renewal date.
- 9) **Burden of Proof:** The applicant bears the burden of proving by a preponderance of the evidence to CDOT that it meets the criteria for Certification.
- 10) **Appeals:** Any full or partial denial for Certification shall be appealable in accordance with CRS §§ 24-4-104 and 105.

**C. Modification of Primary Industry Classification**

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- 1) **Written Request for Modification:** An ESB that seeks a reconsideration of its Primary Industry Classification must submit a written request to CDOT Civil Rights and Business Resource Center outlining the reasons for such request and any other supplemental information that will assist CDOT in making a determination. An ESB may only make one change request within a Certification Year.
- 2) **Appeals:** Denial of a Primary Industry Classification change request shall be appealable in accordance with CRS §§ 24-4-104 and 105.

**D. Renewal of Certification**

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- 1) **Renewal Schedule:** Renewal of Certification shall occur on an annual basis at the end of the Certification Year. Unless otherwise stated, this period begins with the day in which CDOT issues the Notice of Certification and ends with the last day in the same month in the following year.
- 2) **Request to Change:** An ESB may request that CDOT change the Renewal of Certification month. To be considered, such request must be based upon a significant business reason for changing the Renewal of Certification month. If Renewal of Certification and an ESB's tax return preparation are incompatible, then such ESB must request a change in the Renewal of Certification month. CDOT retains the right to accept or deny requests to change the Renewal of Certification dates.
- 3) **Responsibility of Applicant:** The ESB is responsible for submitting Renewal of Certification information to CDOT before the end of its annual period. CDOT will send a courtesy notice regarding renewal approximately 45 days in advance, but it is ultimately the responsibility of the ESB to ensure that all materials are received before the end of the Certification Year. If CDOT does not receive the Renewal

COLORADO DEPARTMENT OF TRANSPORTATION  
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

of Certification information, it shall provide notice to the ESB that it intends to revoke the firm's Certification.

- 4) **Required Documentation:** In order to be considered for renewal, the ESB must submit the ESB Certification Renewal Application and all supporting documentation.
- 5) **Additional Investigation:** If CDOT has reason to believe that an ESB may no longer be eligible for Certification or that a substantial change has occurred in the ownership or operation of the business, it may further investigate the current position of the ESB and its owners.
- 6) **Extensions:** At its discretion, upon written request, CDOT may provide an extension for renewal for one month past the Renewal of Certification date. Such extension is valid only if confirmed in writing. A request for an extension will only be granted when the ESB has demonstrated extenuating circumstances requiring an extension. CDOT will not grant extensions for successive Renewal of Certification periods. If an ESB that is also a DBE is granted an extension for a DBE renewal, such extension does not apply to the firm's ESB Renewal of Certification date unless specifically stated in writing.

**E. Revocation**

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- 1) **Intent to Revoke Letter:** Except in the case of debarment or conviction of a bid-related crime, if CDOT determines that there are reasonable grounds to revoke the Certification of an ESB, CDOT shall send the ESB notice of its intent to revoke. The ESB shall have fifteen (15) days from the date the notice was issued to contest the revocation in writing. If the ESB does not respond within the fifteen (15) days, the revocation shall become effective upon the expiration of such period.
- 2) **Good Cause Required.** If the basis for revocation is failure to renew, the ESB must demonstrate good cause for failing to timely submit completed documentation.
- 3) **Effect on Contract Participation:** The ESB shall be eligible to perform on and count toward the ESB incentives on all Contracts while revocation is pending in accordance with the contract terms.
- 4) **Appeals:** Revocation of Certification shall be appealable in accordance with CRS §§ 24-4-104 and 105.

**F. Restricted Contracts**

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- 1) **Generally:** Subject to all applicable state and federal laws, CDOT may restrict certain Contracts for award to ESB Consultants and Contractors, joint ventures of which ESBs are a member, and ESB mentor-protégé participants where the contract award is expected to be \$1,000,000 or less.
- 2) **Establishing Objectives:** During the review and determination of its tri-annual DBE overall goal, CDOT will also develop target objectives for restricted contracts. These targets shall be based upon projected upcoming work, availability of qualified prime ESBs to perform such work, the amount of ESB

COLORADO DEPARTMENT OF TRANSPORTATION  
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

participation being generated through other means, and the impact of restriction on other objectives of CDOT.

- 3) **Restriction Process:** All eligible projects will be evaluated by the applicable CDOT regional office to determine whether they meet the criteria for restriction, which includes:
  - a. A sufficient number of qualified ESB primes are available to perform the work;
  - b. Without restriction, the available qualified ESB primes would not be able to successfully compete for award of the Contract; and
  - c. Restriction of the contract will not eliminate competition for award or compromise the quality of the work to be provided under the Contract.

**G. Restricted Items**

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- 1) **Generally:** Subject to all applicable state and federal laws, CDOT may restrict certain items within Contracts for award only to ESB Consultants and Contractors, joint ventures of which ESBs are a member, and ESB mentor-protégé participants.
- 2) **Criteria for Restriction:** CDOT may decide to restrict items within a project based upon, but not limited to, the following:
  - a. The size and type of Contract to be awarded;
  - b. The subcontracting opportunities within such Contract;
  - c. Whether the subcontracting items can be clearly delineated from other items within the Contract;
  - d. The number of qualified ESBs available to fulfill the subcontracting opportunities; and
  - e. The potential for adequate competition among qualified, available ESBs.

**H. Reporting**

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- 1) With the tri-annual DBE goal analysis, CDOT shall review and report on the participation of and prospective opportunities for ESBs.
- 2) At a minimum, on an annual basis, CDOT shall report the following to the DBE Committee of the Transportation Commission:
  - a. The number and total dollar amounts of contracts and subcontracts awarded to ESBs;
  - b. The training, technical assistance and outreach provided by CDOT and other entities to ESBs;
  - c. The effectiveness of the ESB Program incentives; and
  - d. Other changes or progress in the ESB Program.

**DBE MONTHLY REPORT FOR CONSTRUCTION CONTRACTS**

Federal Fiscal Year 2013 to Date (10/1/2012 - 12/31/2012)

Federal Dollars Only

	A	B	C	D	E	F	G	H	I
<b>AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD</b> (total contracts and subcontracts awarded or committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
1. Prime contracts awarded this period	\$50,867,605	18	\$0	0	\$0	0	\$0	0	0.0%
2. Subcontracts awarded/committed this period	\$11,752,507	169	\$6,350,215	82	\$4,835,805	65	\$1,514,410	17	54.0%
<b>3. TOTAL</b>			\$6,350,215	82	\$4,835,805	65	\$1,514,410	17	12.5%

	A	B	C	D	E	F	G
<b>DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY &amp; GENDER</b>	<b>Black American</b>	<b>Hispanic American</b>	<b>Native American</b>	<b>Asian American</b>	<b>Non-Minority Women</b>	<b>Other (i.e. not of any other group listed here)</b>	<b>TOTALS (for this reporting period only)</b>
4. Total Number of Contracts (Prime and Sub)	6	31	2	0	43	0	82
5. Total Dollar Value	\$76,069	\$2,820,810	\$929,731	\$0	\$2,523,605	\$0	\$6,350,215

	A	B	C	D	E
<b>ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD</b>	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation
6. Race Conscious	26	\$56,520,019	\$3,968,545	\$5,162,565	9.1%
7. Race Neutral	2	\$1,095,859		\$5,148	0.5%
8. Totals	28	\$57,615,878		\$5,167,713	9.0%

DBE Subcontracts Approved on CDOT Highway Construction Projects 10/1/2012 - 12/31/2012

Subcontract Work Type	Percent of Subcontracts
Traffic Control	24.48%
Curb & Gutter, Sidewalk, Inlets	20.27%
Miscellaneous	15.48%
Storm Drain System	15.09%
Structural Concrete	5.36%
Asphalt (HBP)	4.72%
Landscaping	3.62%
Guard Rail	2.95%
Seeding, Topsoil, Erosion Control	2.00%
Concrete Pavement	1.81%
Culverts	1.25%
Steel	0.94%
Pavement Marking	0.91%
Painting (Not Pavement Marking)	0.64%
Signing	0.24%
Construction Surveying	0.19%
Trucking, Hauling	0.07%

**UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS - CONSULTANT ("Pilot")**

5. Reporting Period:	FFY 2013 to Date (10/1/2012 - 12/31/2012)							
	A	B	C	D	E	F	G	H
<b>COMMITMENTS/AWARDS MADE DURING THIS REPORTING PERIOD</b> (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars) [E+G]	Total to DBEs (number) [F+H]	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)
8. Prime contracts awarded this period	\$23,263,000	15	\$2,000,000	1	0	0	\$2,000,000	1
9. Subcontracts awarded/committed this period		149	\$3,574,700	100	\$3,574,700	100	\$0	0
9.5 Totals			\$5,574,700	101	\$3,574,700	100	\$2,000,000	1
	A	B	C	D	E	F	G	H
<b>DBE COMMITMENTS/AWARDS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY &amp; GENDER</b>	<b>Black American</b>	<b>Hispanic American</b>	<b>Native American</b>	<b>Asian American</b>	<b>Asian-Pacific American</b>	<b>Non-Minority Women</b>	<b>Other (i.e. not of any other group listed here)</b>	<b>TOTALS [A+B+C+D+E+F+G]</b>
10. Total Number of Contracts (Prime and Sub)	0	12	0	18	1	64	6	101
11. Total Dollar Value	\$0	\$517,500	\$0	\$1,432,720	\$15,000	\$3,389,480	\$220,000	\$5,574,700

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Percentage of total dollars to DBEs [C/A]
8.60%
23.96%