



# COLORADO

## Transportation Commission

2829 West Howard Place, Denver, CO 80204-2305

DATE: September 17, 2020

TO: Transportation Commission

FROM: Greg Diehl, Director, Civil Rights & Business Resource Center (CRBRC); Stephen Harelson, Chief Engineer

SUBJECT: Authorize Commencement of Rulemaking for 2 CCR 604-1, Emerging Small Business Program (“ESB Rules”)

### 1. Purpose

To authorize the Department to commence the rulemaking process by opening the Emerging Small Business Program Rules, 2 CCR 604-1.

### 2. Action

To pass a resolution authorizing the Department to commence rulemaking to update the ESB Rules and delegate authority to an Administrative Hearing Officer to conduct a public hearing.

### 3. Background

Pursuant to §§ 43-1-106(8)(j), (k) and (p), C.R.S., the Transportation Commission has the authority to adopt and amend the ESB Rules. The ESB Rules were last adopted in 2011, and sets forth the requirements for small businesses to become certified as an Emerging Small Business (ESB) in Colorado. § 43-1-106(8)(p) specifies that:

In promulgating such regulations, the commission may provide such assistance to eligible small businesses as the commission determines is appropriate to promote the participation of small businesses in the performance of highway construction work, professional services work, and practice of research work and thereby to increase the competition and lower the cost to the state for such work.

The statute also specifies that the assistance provided to small businesses can include, but is not limited to: (A) Assistance in developing business plans; (B) The provision of technical assistance to small businesses; (C) The provision of payments to prime contractors and consultants for the actual costs incurred by such contractors and consultants in providing job training to small business subcontractors and subconsultants; (D) The restriction of certain smaller projects to only eligible small businesses; (E) The provision of assistance to small businesses with bonding and retainage requirements, including, but not necessarily limited to, the waiver of bonding or retainage requirements for certain smaller projects; (F) Increasing the number of smaller projects that could be completed by small businesses in construction and nonconstruction areas; and (G) The adjustment of the points awarded in the evaluation of any prospective consultant who is an eligible small business or who will hire eligible small businesses as subconsultants in construction and nonconstruction areas.

Staff reviewed the ESB program’s effectiveness, evaluating current eligibility criteria to determine whether the requirements were meeting the stated program goal. The review showed that the effectiveness of the ESB program proved to be limited, particularly for construction contracting firms operating in a low-bid selection environment. Therefore, staff is proposing the following key changes to the ESB Rules:

- Increase the overall programmatic size cap of a qualifying small business to equal 100% of the federal Disadvantaged Business Enterprise (DBE) size cap. This change will allow small construction contractors to better leverage ESB program benefits, and will position CDOT to better support firms who are ready to develop competitive capacity by becoming prime contractors and/or consultants.
- Increase the Level 1 size cap of qualifying small businesses to be equal to 50% of the federal DBE size cap. This change will allow the ESB program to continue to serve smaller firms and professional service providers more specifically via targeted programmatic initiatives like restricted projects.

### 4. Next Steps

Staff will proceed with the next steps to comply with the rulemaking requirements set forth by the Administrative Procedure Act, including gathering public comments from stakeholders and holding a public rulemaking hearing.

### 5. Attachments

- Resolution
- Redlined draft of 2 CCR 604-1 showing initial proposed changes ([available by link](#))