

CDOT Civil Rights Construction Contract Compliance Manual



**Civil Rights &
Business Resource
Center**

Spring 2020

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This manual has been produced by CDOT's **Civil Rights & Business Resource Center (CRBRC)** the Headquarters Civil Rights Office. The CRBRC is responsible for developing civil rights programs and monitoring compliance administration.

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Key Updates to CDOT Processes for 2020

Electronic Sublet Requests Now Accepted

- Prime Contractors may now submit 205s electronically through B2GNow.
- To opt-in to this process, primes must request and receive approval from the CDOT Project Manager.
- Requests to participate in this process are project specific.
- Contractors who opt-in to this process for a specific project cannot later opt-out.
- The process uses CDOT Form 205 for Electronic Sublet Requests, which does not require physical signatures.
- Prime contractors may request permission for any active project through the Region Civil Rights Office

Trucking Reporting

- New reporting information specific to trucking
- Both prime contractors and trucking subcontractors need to revisit this section in order to make sure that payrolls are not rejected.

Executive Exemption

- Business owners will be required to submit payrolls without entering rates paid or hours worked
- Business owners must sign the Owner 541 Exemption document

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Wages, OJT, and Small Business

Construction Projects: Contact your RCRO
Program Questions: Contact CRBRC

Prime Contractor Prequalification

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Small Business Certifications

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Contractor Registration in B2GNow

Who Must Register

All Contracting firms (including subcontractors & suppliers) must register before being approved to work on a CDOT contract as a prime contractor, subcontractor, trucker, or supplier. Only one registration is required per firm. Firms may have multiple users associated with the firm's account.

Why Registration is Required

Information collected during the registration process is required by the Federal Highway Administration. CDOT must provide information about firms bidding on its projects annually. The information also helps CDOT gain a better understanding of the contracting community. Finally, registration helps CDOT ensure the correct vendor account is transferred to LCPTracker for certified payroll reporting.

Regulation/Rule/Specification

This is a CDOT rule. It's written in the contract specification in Section 108.01 of CDOT's Standard Specifications for Road and Bridge Construction, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications/2019-specs-book/2019-standard-specifications/view>

Consequence of Not Registering

Failure to Register in CDOT's B2GNow Business Management System will result in the contractor's Form 205 being upheld, and the project will be delayed.

Free bid plans, planholders lists, and associated documents are available on B2GNow for Registered contractors. By answering a few questions about your firm, contractors are able to review and download this information free of charge.

FAQs

- 1) *Is Registration the same as Prequalification?*
No. All contractors and suppliers working for CDOT must submit a registration. Only prime contractors must be prequalified.
- 2) *If I already have an account in B2GNow does that mean that I am registered?*
B2GNow is a program used by governmental agencies nationwide. Having an account with B2GNow is NOT the same as being registered with CDOT. To learn how to determine whether your firm is already registered with CDOT, see page 7 of this Manual.
- 3) *If my firm is DBE certified, am I already registered?*
No, registration with CDOT is different than DBE certification.

4) *What if I don't know the information on the registration form?*

Answer to the best of your ability. The options are tied to the federal small business size standards and are intended to provide approximate ranges. This information is provided to FHWA as a broad picture of who is bidding on CDOT jobs.

5) *Do I have to review my registration?*

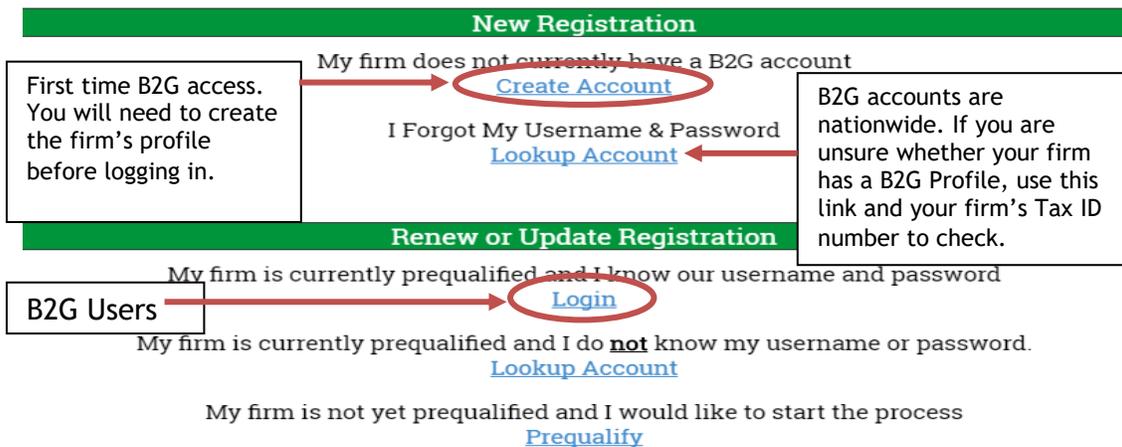
Yes, your registration is valid for one year. When your firm's registration expires, you will need to submit the renewal application electronically.

Accessing the Registration Form

- From the Login Page at <http://contracts.codot.gov/>,



- Login in using your email address and password OR
- Select Register, then identify and select the appropriate option from the popup menu.



- If you logged in using option a above (i.e. without first clicking Register), you will need to select “Start/Renew Contractor’s Registration/Prequalification” from your key actions menu. Then select “New Contractor’s Registration/Prequalification & Renewal



- After reaching the menu below, click “Contractor Registration” to access the Registration form.

Completing the Registration Form

1. Confirm you have entered the correct form, and select “Start Contractor’s Registration/Prequalification.” Note, despite the title - contractors registration/prequalification - the start button will only take you to the form type you have selected.

Contractor's Registration/Prequalification

TYPE	Contractor Registration
DESCRIPTION	All contractors seeking work on CDOT projects must complete this Contractor Registration form.

Your account is in order and you can proceed with submitting the Contractor's Registration/Prequalification. Click **Start Contractor's Registration/Prequalification** below to continue.

Start Contractor's Registration/Prequalification Cancel

2. Confirm and update the information in the Entity Information section.
3. Complete the Business Information section of the registration form. Answer the questions to the best of your knowledge. The questions serve as approximations to give CDOT a better idea about the size of firms that are bidding on projects.
4. In the Financial Information section, select the approximate size of the firm.
5. Select the appropriate DBE certification status.
6. In the Primary NAICS Code section, select the one NAICS code that best describes your firm’s primary work area. If your firm is DBE certified, this may be different than your firm’s certified codes.
 - a. To assign a code to your profile, select “Add Primary NAICS Codes”

Add Primary NAICS Codes

- b. If you know the code you want to add, enter the six digit code into the search box and select Search. Otherwise, select “Browse Codes”

Search OR **Browse Codes** Return

CO UCP NAICS: CO UCP NAICS

- c. Select “Add” next to the correct code. Select OK in the popup menu.

Actions	Code Type	Code	
Add	CO UCP NAICS	541330	Acoustical engineering consulting services [
Add	CO UCP NAICS	541330	Civil engineering services [Size standard: \$

- d. In the top, right corner of the screen, select return. Your selected code will appear below the “Add Primary NAICS Codes” button.

Add Primary NAICS Codes

CO UCP NAICS 541330

7. At the bottom of the screen, select “Next.” Then review, check the box, and submit.



Find out if your firm is registered to do business with CDOT



1. On the left side of the screen, select “View” to expand the menu, then select “My Registrations/Prequalifications.”
2. Any active, pending, or incomplete registrations and prequalifications will be listed on the next page. Verify that your firm has an Active(Auto-accepted) contractor registration.

Contractor's Registrations/Prequalifications		
Actions	Contractor's Registration/Prequalification	Status
View	Contractor Registration	Active (Auto-accepted)

3. If your firm is not registered or prequalified, you will see the following.

Contractor's Registrations/Prequalifications		
No Contractor's Registrations/Prequalifications found.		



Prime Contractor Prequalification in B2GNow

Who Must Prequalify

Prime Contractors that intend to contract directly with CDOT. Only one pre-qualification is required per firm.

Why Prequalification is Required

Prequalification helps CDOT ensure that prime contractors are financially able to perform on CDOT projects. Contractors must be prequalified to bid on CDOT projects. The B2GNow system is how CDOT tracks prequalifications.

When Prequalification is Required

New applications may be submitted immediately. Currently, prequalified firms must submit new applications online at least 17 days prior to the expiration of their existing prequalification.

Regulation/Rule/Specification

This is a CDOT rule. It is contained in Section 102.01 of CDOT's Standard Specifications for Road and Bridge Construction, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications/2019-specs-book/2019-standard-specifications/view>

FAQs

1) *Is Prequalification the same as B2GNow Registration?*

No. All contractors and suppliers working for CDOT must submit a registration. Only prime contractors must be prequalified. Additionally, while registrations are auto- approved, prequalifications go through a more thorough review process.

2) *If my firm is already prequalified, do we have to reapply for prequalification electronically?*

Existing prequalifications are valid through their expiration dates. There is no need to reapply if your firm's prequalification is still valid. When your firm's prequalification expires, you will need to submit the renewal application electronically if you wish to remain prequalified.

Planning a Bid Using Wage Decisions

Wage Decisions Overview

A wage decision is a list of pay rates and fringe benefits for each classification of mechanic and laborer for which the U.S. Department of Labor (DOL) has determined to be prevailing in a given area for a particular type of construction.

Who is Impacted

This information applies to all contractors and subcontractors working on a federal project. Contractors will want to consider whether prevailing wages are required for the proposed project.

How do I Know Which Wage Decisions Is Applicable

The wage decision is attached to the plans and specifications for each federal-aid project and applies to the duration of the project.

Regulation/Rule/Specification

Paying prevailing wage is required by the Federal Davis-Bacon Related Acts. For more information, visit

<https://www.dol.gov/whd/govcontracts/dbra.htm>

FAQs

1) *Where can I find out more information about wage decisions?*

Detailed wage decision information is located in *Section 5: Labor Compliance* of this manual.

Wage Decisions & Local Agency Projects

Who is Impacted

Contractors that work on CDOT local agency (i.e. cities and counties) projects and all contractors who do work for them.

When Davis-Bacon Wages Are Required

Whether a local agency project has a Davis-Bacon requirement depends on two factors: (1) Type of funding and (2) the functional classification of the road involved in the project. If a project is determined to be on a local road, it may be exempt from sections IV and V (labor standards) of the FHWA 1273.

When CDOT Makes the Determination

CDOT personnel request a Davis-Bacon determination before the project goes out to bid.

Where to Find the Wage Decision

If Davis-Bacon wages apply, a wage determination will be attached to the plans and specifications of the project. Per the Davis Bacon and Related Acts and the 29 CFR, all Prime Contractors must attach a copy of the wage decision to any subcontractor working on a Federal job. For assistance finding a wage determination, please contact the local agency engineer on the project.

Regulation/Rule/Specification

Davis-Bacon and Related Acts FAQ, available at

https://www.fhwa.dot.gov/construction/contracts/dbra_qa.pdf

FAQs

1) *When do Davis-Bacon rules apply?*

Davis-Bacon rules apply based on funding streams and functional classifications. Just because a road is in a rural area does not necessarily mean that it will be exempt from Davis-Bacon wages

2) *What funding streams require Davis-Bacon wages?*

There could be a few types of funding that requires Davis-Bacon wages, but for local agencies, it is usually TAP funds, emergency funds, and those that are for Safe Routes to Schools that almost always require Davis-Bacon funds.

On-the-Job Training Goals

Who is Impacted

All federally assisted projects will be evaluated for an OJT goal. Prime Contractors are responsible for meeting the OJT goal if there is one on the project.

Why OJT is Required

CDOT's OJT Special Provision is an implementation of 23 USC 140(A) (see link below). As an implementation of that law, the Federal Highway Administration (FHWA) requires state transportation agencies to establish a training program.

When CDOT Sets the OJT Goal & Where to Find It

CDOT sets a goal before the project goes out to bid. Contractors need to understand that meeting the OJT goal requires some thought and attention ahead of time so that they can bid appropriately recognizing the training provision requirements.

Regulation/Rule/Specification

OJT is a federal requirement contained in 23 CFR Part 230, Appendix B to Subpart A, available at

https://www.ecfr.gov/cgi-bin/text-idx?SID=4f4c8515fcb6873787857e30df84a31b&mc=tr%20ue&node=pt23.1.230&rgn=div5#ap23.1.230_1121.b

FAQs

1) *Do all projects have an OJT goal?*

All federal-aid projects are evaluated for an OJT goal. Some projects might have a zero goal, meaning no training hours are required on the project. Review the bid documents and/or contact the Regional Civil Rights Office for more information.

2) *What happens if the training hours fall short of the OJT goal?*

The prime contractor will be subject to a disincentive. See the CDOT Standard Special Provision for OJT for more information.

3) *Can we just use the training program that we have in-house?*

A contractor may use its in-house training program if that program has been approved by CDOT. Another option might be to use CDOT's PAC-UP OJT program, free of charge. There are also additional options outside of CDOT that the contractor can use such as US DOL programs, CCA, WCCA, etc.

4) *Where can I find out more information CDOT's latest OJT specifications?*

The latest spec, manual, webinar, and other pertinent information is available at <https://www.codot.gov/business/civilrights/ojt>

Small Business Requirements: DBE Goals

DBE Program Overview

The Disadvantaged Business Enterprise program is a federally mandated program aimed to correct the historic underutilization of firms owned by women and members of socially and economically disadvantaged groups.

<https://www.codot.gov/business/civilrights/smallbusiness/dbe>

Who is Impacted

All prime contractors bidding on federally funded contracts need to be aware of the DBE goals and requirements on those projects.

Why DBE is Required

49 CFR Part 26 may require the setting of DBE goals on federally funded contracts. As condition of award, bidders must make good faith efforts to meet a DBE contract goal. Contracts with DBE goals cannot be awarded unless the bidding contractor makes sufficient commitments to meet the DBE goal or demonstrates a good faith effort to do so.

When and How CDOT Sets the DBE Goal

Goals are set by CDOT prior to contract advertisement. Goals are set to reflect the level of participation we would expect to see from disadvantaged firms, absent the effects of discrimination. Goals are set by region civil rights staff based on their analysis of possible subcontracting opportunities and the availability of ready, willing, and able DBE firms that could reasonably be expected to participate on the project. For more information on the goal setting process, please see Appendix A of this manual.

Regulation/Rule/Specification

This federal requirement is contained in 49 CFR Part 26, available at

<https://www.ecfr.gov/cgi-bin/text-idx?SID=70c02b78d4e514ad2dc705d951fc6377&mc=t%20rue&node=pt49.1.26&rgn=div5>

FAQs

1) Which firms count toward DBE goals?

Only firms that are certified as DBEs and listed as such on the Colorado Unified Certification Program (UCP) DBE directory may count for DBE credit. Agencies certify firms to perform certain types of work. While a DBE is allowed to perform any work listed on an approved Form 205, only the types of work for which a firm is certified can count toward the DBE goal.

2) How can I tell if a firm is DBE certified?

All certified DBE firms are listed on the Colorado DBE directory at

<http://coloradodbe.org>



- 3) *What constitutes a good faith effort?*
If a bidder makes a good faith effort, the bidder will be able to show that it took all necessary and reasonable steps to achieve a DBE goal 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.
- 4) *When does a bidder/prime contractor need to worry about the DBE goal?*
Prior to bidding and throughout the contract. CDOT needs to see sufficient commitments or other good faith efforts to meet the goal prior to contract award. The prime contractor must ensure commitments are kept and goals are met throughout the contract.
- 5) *Does a 0.00% goal mean the project is not federally funded or that DBEs cannot be used?*
No. A 0.00% goal means there was not sufficient DBE availability or enough subcontracting opportunities to justify mandated DBE participation. On federally funded contracts with a 0.00% goal, CDOT's typical contract requirements apply. Any DBE participation on the contract is voluntary and does not require a DBE commitment (CDOT Form 1415). Should a prime contractor make a commitment to a DBE firm, that commitment is binding and may result in sanctions if unfulfilled.
- 6) *What happens if DBE participation exceeds the goal on a project?*
Any participation achieved in excess of the goal is considered race-neutral participation. Race-neutral participation is achievable whether or not your firm has made a commitment to use a particular DBE. While race neutral participation (outside a commitment to use a particular DBE) can protect you should you need to modify a commitment to a firm on your team, CDOT does not look more or less favorably based on your use of DBE firms in excess of the goal.
- 7) *What happens if DBE subcontractor loses its DBE certification while performing on a project?*
For DBE participation to count on a project, the DBE firm must be certified at the time the commitment is reviewed by CDOT and at the time the DBE's subcontract is executed. If a firm is no longer certified at the time of the Form 205 submission, the DBE's participation may no longer count toward the contract goal. The Contractor will be given an opportunity to seek substitute DBE participation.
- 8) *How does a firm apply for DBE certification?*
<https://www.codot.gov/business/civilrights/smallbusiness/dbe>
- 9) *Is certification guaranteed?*
No, certification is not guaranteed; see the above link for more information.

Small Business Requirements: Emerging Small Business (ESB)

ESB Program Overview

As part of the Federal DBE program, States are required to have a race- and gender- neutral small business program; CDOT's fulfillment of this requirement is the Emerging Small Business Program.

<http://codot.gov/business/civilrights/smallbusiness/esb>

Who is Impacted

Prime contractors on design-build or other innovative contracts may need to be aware of ESB goals on those projects.

Why ESB is Required

This program, approved by the Colorado Legislature, promotes competition for small businesses on CDOT construction, professional services, and research contracts. These competitive opportunities can happen in various ways: prime contractors may get extra points on design-build or innovative contracts, or certain projects may be restricted to bidding only by ESB certified firms. Specific ESB requirements for individual projects will be included in the advertisement.

Regulation/Rule/Specification

This state requirement can be found in 43 CRS 106

<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=4264>

FAQs

1) Which firms count for ESB participation?

Only firms that have been certified by CDOT as Emerging Small Businesses may count for ESB participation on a project. Unlike the DBE program, certified ESB firms count toward ESB participation for any area of work.

2) How can I tell if a firm is ESB certified?

All certified DBE firms are listed on CDOT's ESB directory at <http://contracts.codot.gov>

3) How do I pursue certification for this program?

Visit <http://codot.gov/business/civilrights/smallbusiness/esb> and it will guide you to the location where you can apply for certification. It will also tell you the requirements to be a part of the program.

4) Is certification guaranteed?

No, certification is not guaranteed; see the above link for more information.

Section 2: Award Process

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Contacts

DBE Utilization Plan

dot_compliance@state.co.us | (303) 757-9234

FHWA 1273

Regional Civil Rights Office



DBE Utilization Plans

DBE Utilization Plan Overview

A utilization plan (UP) is a completed list of all DBE certified firms a prime contractor has committed to use over the course of a project.

Who is Impacted

The prime contractor selected as the apparent low bidder must submit a utilization plan for approval.

Why DBE Utilization Plans are Required

Federal regulations require that CDOT make contract awards conditional on the bidder's good faith effort to meet any DBE goals on the contract. The utilization plan lists the DBE firms the bidder intends to use in order meet the DBE contract goal. The bidder's utilization plan must be approved before CDOT can award the contract.

When and Where to Submit the DBE Utilization Plan

A prime contractor must submit its utilization plan within five days of being selected as low apparent bidder via B2GNow at <http://contractcs.codot.gov> Utilization Plans are reviewed by CDOT's Civil Rights & Business Resource Center at HQ prior to contract award.

Regulation/Rule/Specification

The federal requirement can be found in 49 CFR Part 26, which is available at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

CDOT's DBE contract requirements are found in CDOT's DBE Special Standard Provision, available at

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What does CDOT look for in the utilization plan?*

CDOT checks to make sure that (1) the prime contractor has made sufficient commitments to meet the DBE goal and (2) the prime contractor is relying on businesses that are DBE certified to perform the work they are contracted to perform on the project.

2) *What if CDOT determines the total eligible DBE participation on the utilization plan does not meet the contract DBE participation goal?*

The prime contractor will have two business days to amend the utilization plan (Form 1414) and return it to CDOT with modifications to its comments.

- 3) *What happens after I submit the Utilization Plan to CDOT?*
CDOT reviews the plan to make sure that it matches the work and dollar amounts committed to specific DBE firms on the Form 1414. Each DBE listed must also have a signed, complete Form 1415, confirming their participation on the project. Once the plan has been reviewed, the CDOT will reject, return, or approve the plan. Prime contractors will be notified of the outcome via the B2GNow system. If the plan is approved, no further action is required.
- 4) *What needs to be done if the plan is returned?*
If the plan is returned, the prime contractor will receive an automated email message from the B2GNow system. Comments from the reviewer will be included in both the email and the returned plan (once logged into the system).

CDOT Form 1415: DBE Commitment Confirmation

CDOT Form 1415 Overview

This form is a binding contractual agreement between the prime contractor and CDOT that the prime contractor will use the listed DBE subcontractor for the amount and type of work listed on the form; it is not a binding agreement between the prime contractor and subcontractor.

Who is Impacted

This form applies to contractors selected as the apparent low bidder on CDOT contracts with a DBE goal greater than 0% and to DBE-certified subcontractors whose work is being used to meet the DBE goal on federally funded contracts. The 1415 must be completed by each DBE certified subcontractor that the prime contractor is committing to use over the course of the contract. The total amount committed across all Form 1415s must meet the overall DBE goal, unless otherwise approved by CDOT.

The top half of the form must be completed by the prime contractor, and the bottom half must be completed and signed by the DBE-certified subcontractor. Only employees or officers of a company with the authority to contractually bind the firm may sign the form. Suppliers' quotes may also be required in support of these forms.

Why CDOT Requires the 1415

CDOT Form 1415 is DBE firm's written confirmation of its participation on a contract. Federal regulations require that bidders on a federally-assisted contract with a DBE goal provide written confirmation from each committed DBE of its participation on the contract in the kind and amount of work listed by the bidder as part of its bid submission.

When and Where to Submit the 1415

Prime contractors should submit all Form 1415s with its utilization plan within five days of being selected as low apparent bidder via B2GNow at <https://contract.codot.gov>.

Utilization plans will then be reviewed by CDOT's Civil Rights & Business Resource Center at HQ prior to contract award.

Regulation/Rule/Specification

CDOT's rule regarding Form 1415 can be found in the DBE Special Standard Provision, which can be found at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What if the low apparent bidder's commitments don't add up to the contract goal?*

The total amount committed across all Form 1415s must match the commitments listed on the Form 1414 and be greater than or equal to the overall DBE goal on the contract. Should the total committed amount fall short of the DBE goal, CDOT will not award the contract unless the prime contractor is able to show that it made good faith efforts to meet the goal, despite falling short. The prime contractor may commit to DBE participation beyond the required goal. However, every DBE commitment made becomes binding on the low apparent bidder, even if it total overall DBE participation on the contract goes beyond the DBE goal.

2) *Does the prime contractor have to commit to use a firm for the entire amount of the subcontract?*

No. Subcontracts are agreements between the prime and the subcontractor to a perform a particular job, whereas commitments are an agreement between the prime and CDOT to attain a certain level of DBE participation from an identified firm. The two agreements are entirely unrelated. You are only required to commit to a particular DBE firm (or combination of firms) up to the DBE goal, however a project may require you to subcontract a far greater amount of the work to that firm.

3) *Should the amount on the Form 1415 match the amount listed on the Form 205 for a DBE certified sub?*

Not necessarily, but if the amount listed on the Form 205 is less than what is listed on the Form 1415, it may be questioned by CDOT.

4) *How are commitments beyond the DBE goal enforced?*

Every commitment made by the prime contractor is binding, even if the commitment takes the prime contractor's overall participation beyond the DBE goal.

5) *If this form creates an agreement between the prime contractor and CDOT, why does the subcontractor need to sign it?*

Subcontractors are required to sign the Form 1415 to acknowledge to CDOT that they are aware that the prime contractor is making a commitment to use them and that they are capable of performing the expected work. Subcontractors must also indicate to CDOT what portion of the work they anticipate self-performing. Any work not self-performed may affect the percentage of the subcontractor's participation that can count toward the project's DBE goal.



6) *What if I need to replace a DBE subcontractor?*

The utilization of a DBE subcontractor that is listed on the prime contractor's utilization plan is a condition of award. The DBE firm must therefore be utilized for the work items listed on the plan. If the need to replace them arises, please contact the Region Civil Rights Office. DBE firms that are participating on the contract without a CDOT Form 1415 may be replaced in the same manner as any other subcontractor.



CDOT Form 1416: Good Faith Effort Report

CDOT Form 1416 Overview

CDOT Form 1416 is the form prime contractors use to justify a failure to meet the DBE goal at the pre-award stage of the project.

Who is Impacted

Prime contractors selected as the apparent low bidder on CDOT contracts with a DBE goal greater than 0% who fail to meet the DBE goal.

Why CDOT Requires the Form 1416

CDOT Form 1416 is the justification of the prime contractor's failure to meet the DBE goal. Federal regulations require CDOT make contract awards conditional on the bidder's good faith effort to meet DBE contract goals. This form details and documents the low apparent bidder's good faith efforts to meet the stated DBE goal.

When and Where to Submit the Form 1416

Prime contractors should submit Form 1416 with its utilization plan via B2GNow at <https://contract.codot.gov>.

Regulation/Rule/Specification

CDOT's rule regarding Form 1416 can be found in the DBE Special Standard Provision, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What is CDOT looking for in a good faith effort demonstration?*

CDOT is looking for documented evidence that the efforts employed by the bidder were 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.

2) *What does CDOT consider in making a good faith effort determination?*

CDOT may consider the number and variety of the prime contractor's solicitation attempts, how diligently the prime contractor worked to identify subcontracting opportunities, and the number and variety of work codes the prime contractor searched for.

3) *Where can I find additional guidance and examples of good faith efforts?*

Please see CDOT's website

<https://www.codot.gov/business/civilrights/smallbusiness/dbe/gfe>

Accessing the Utilization Plan

1. Login to the B2G System at <http://contracts.codot.gov/>



2. On the home screen, find Utilization Plans in your dashboard. Utilization Plans requiring your attention will be in red. Access any of them by selecting the red, underlined numbers on the right.

Utilization Plans	Total
Pending Submission »	<u>1</u>
Returned, Pending Resubmission »	<u>1</u>
Approved »	10

3. From the list of your UPs pending submission, identify the project you want to submit a plan for and click submit.



Completing the Utilization Plan

1. Complete Step 1 with the amount of your bid by selecting either update or Fill in Utilization Plan Details

Step 1: Provide Utilization Plan Information

Use this section to provide information on the plan. Click the button to Fill in Utilization Plan Details.

Utilization Plan Information	
Estimated Bid/Transaction Amount	Not entered yet (update)

2. Complete Step 2 by adding all certified subcontractors and suppliers.
 - a. Select “Add Subcontractor” in Step 2.

- b. Search Subcontractor using “get subcontractor” link.

Subcontractor Assignment

Subcontractor *	Get Subcontractor from vendor database
Contact Person *	None selected ▼
Address *	None selected ▼

- c. Complete all required fields and attach each 1415 using the Attach File Button



Subcontractor Details

Subcontractor Tier * Subcontracts to [Prime] CDOT Prime Test 1 ▾

Proposed Amount & Percent *
 By Amount: \$
 By Percent: %

Count Towards Goal *
 Yes - Payments to this contractor will count towards the Goal.
 No

Type of Participation *
 Subcontractor/Subconsultant
 Supplier - Manufacturer
 Supplier - Regular Dealer
 Supplier - Packager, Broker, Distrib., Wholesaler, Manuf. Rep.
 Joint Venture
 Fees & Commission Broker
 Trucking & Hauling
 Trucking & Hauling Brokerage

Work Description *

Work Codes
 Currently assigned work codes:
 No Codes Assigned

[Click here to see if there are any available work codes assigned to recognized certifications for the assigned vendor.](#)

Estimated Start Date (mm/dd/yyyy)
 Estimated End Date (mm/dd/yyyy)

Attached File(s)

Comments

Select DBE goal unless the project is state funded and has an ESB goal.

Certified firms will have a list of accepted work codes. You must select all applicable work codes and then click assign.

3. If necessary, submit the waiver in Step 3. If your plan is meeting the Contract DBE goal, proceed to Step 4.
 - a. On the right side of the screen, click “Attach Waiver Files” at attach your 1416 and any supporting documentation.

Waiver Status

❗ **Waiver required**

[Attach Waiver Files \(clear details\)](#)

- b. Use the text box to give a brief summary of your request to waive the DBE goal. (optional)
 - c. Select “Save Waiver Details”
4. Select “Submit Utilization Plan”, complete the required fields, then select “Submit Utilization Plan” again to submit the plan.

Step 4: Sign and Submit Utilization Plan

To submit this plan click the button below. You will be asked to provide your full name as your signature, title, company name, and check the affirmation box. If any warnings are listed, you must address them!

Fill in the required fields below, check the box to affirm your submission, and click **Submit Utilization Plan**.

Sign & Submit This Utilization Plan

Type your full, legal name*

Type your title*

Type the legal name of your organization*

Enter today's date* (mm/dd/yyyy)

By checking the box I affirm that the information provided in this utilization plan is true and accurate. Making false representations or including information evidencing a lie is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or without may not be counted toward DBE, and/or ESB utilization.

5. You will be notified if your plan is accepted or returned.



FHWA 1273: Required Contract Provisions

FHWA 1273 Overview

The FHWA 1273 is a document that outlines the laws and required contract provisions that are associated with federal-aid projects. On federal-aid projects, the FHWA 1273 is required to be in the prime contract and every subcontract.

Who is Impacted

This document applies to the prime contractor on any federal-aid construction contract as well as any subcontractor or supplier, regardless of the tier.

Why FHWA Requires the 1273

As a contractual document, the FHWA 1273 legally binds all contractors on federal-aid projects to the federal rules listed in the document. The FHWA 1273 notifies all contractors of these federal obligations. Topics listed in the FHWA 1273 include equal employment opportunity, affirmative action, Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, and Davis-Bacon and Related Acts. All contractors on CDOT federal-aid projects are required to abide by the provisions set forth in FHWA 1273.

When and Where to Address the 1273

The FHWA 1273 must be physically incorporated into all subcontracts, and it needs to be incorporated by reference for supplier contracts.

Regulation/Rule/Specification

23 CFR 633.102

<https://www.govinfo.gov/content/pkg/CFR-2001-title23-vol1/xml/CFR-2001-title23-vol1-sec633-102.xml>

FAQs

1) *What happens if a contractor does not incorporate the FHWA 1273 into subcontracts?*

The contractor is out of federal compliance. Being out of federal compliance can have different consequences based on the situation. Any contractor out of compliance should be proactive and work with CDOT to come into compliance.

Section 3: Pre-Construction

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Contacts

General Compliance & OJT Requirements
Construction Projects: Contact your RCRO
Program Questions: Contact CRBRC

Nondiscrimination: Title VI

dot_civilrights@state.co.us

(303) 757-9234

CDOT Form 205: Sublet Permit Application

Form 205 Overview

CDOT Form 205: Sublet Permit Application is required when a prime contractor makes an agreement with an individual, firm, corporation, or other legal entity to perform part of the CDOT contract.

Who is Impacted

Prime contractors are required to submit CDOT Form 205 for all subcontractors on the project. Subcontractors must complete these forms and submit them to the prime contractor. Prime contractors will submit the completed form to the CDOT Regional Civil Rights Office and the form must receive CDOT approval prior to the subcontractor beginning work.

Why the 205 is Required

CDOT is federally required to know who is working on its projects. In accordance with the FHWA 1273 (part VI, Subletting or Assigning the Contract) and CDOT Standard Specifications for Road and Bridge Construction 108.01, “The Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract or Contracts, or any portion thereof without written permission from the Engineer.” This helps keep CDOT aware of who is subcontracting on projects.

Regulation/Rule/Specification

FHWA 1273, part VI. See also section 108 of the CDOT Standard Specifications for Road and Bridge Construction, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What does the submittal of the CDOT Form 205 mean?*

It means that the Contractor acknowledges the following:

- There is a fully executed subcontract or service agreement in place.
- The subcontractor has not commenced work and will not commence work until the written subcontract has been fully executed and the Form 205 has been approved.
- The subcontract includes all prime contract terms and conditions.
- On federal-aid projects, the fully executed subcontract includes a copy of the FHWA 1273 - Required Contract Provisions Federal-Aid Construction Contracts.
- The contractor and subcontractor shall:
 - Make partial payments to subcontractors and suppliers in accordance with subsection 107.01, CRS 24-91-103(2), Prompt Payment Statute, and subsection 109.06(e) Prompt Payment.
 - Promptly notify subcontractors and suppliers of any reason for delaying

- partial payments.
- Provide a copy of the monthly estimate to subcontractors who perform work.
 -
- 2) *Where can I find instruction about how to fill out the CDOT Form 205?*
<https://www.codot.gov/library/forms/cdot0205inst.pdf>
 - 3) *Do truckers need to submit Form 205?*
Yes, all truckers (including owner-operators) must have a CDOT Form 205 in place, even if they are tiered under another trucking firm. Please see Section 5: Labor & Compliance for more information on Trucking requirements.
 - 4) *How much of the project work can be subcontracted?*
Prime contractors are required to perform at least 30% of the contract work via their own workforce (FHWA 1273, Part VI). Therefore, they are permitted to sublet up to 70% of work.
 - 5) *Can subcontractors further sublet a portion of the work?*
Yes; each tier below them will have to sign a CDOT Form 205, and the prime contractor is responsible for the compliance of all subcontractors and suppliers, regardless of tier.
 - 6) *If a subcontractor performs work for two different contractors on the same job, is a separate Form 205 required?*
Yes, a Form 205 will be needed for the work under each contractor because the Form 205 is associated to separate subcontracts.

Modified 205 for Electronic Approval

Beginning in 2019, contractors may request permission from their project manager to submit sublet requests electronically. Please see the following process guide for instructions on how to submit 205s through the B2GNow system.

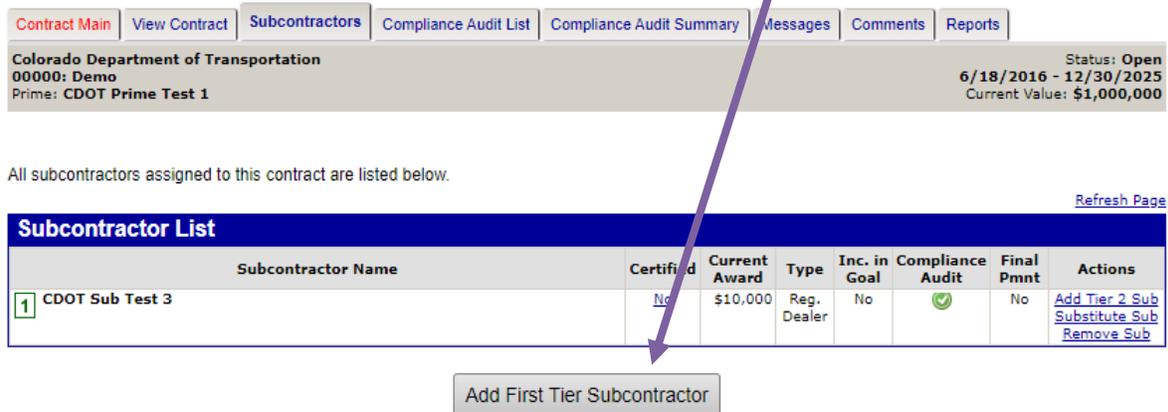
Note: This is a pilot program. Contact your Region Civil Rights Officer with questions.

Sub Requests (Primes Only)

Request to add any subcontractors, subconsultants, DBE suppliers at any amount, Non-DBE suppliers providing at least \$10,000 worth of goods and materials, vendors, truckers/haulers, manufacturers, etc. to the contract. All participants receiving payment on the project must be requested and approved through the B2GNow system.

Adding First Tiers Subs & Suppliers

1. From the Subcontractors tab of the contract, click Add First Tier Subcontractor.



Contract Main | View Contract | **Subcontractors** | Compliance Audit List | Compliance Audit Summary | Messages | Comments | Reports

Colorado Department of Transportation
00000: Demo
Prime: CDOT Prime Test 1

Status: Open
6/18/2016 - 12/30/2025
Current Value: \$1,000,000

All subcontractors assigned to this contract are listed below. [Refresh Page](#)

Subcontractor List								
	Subcontractor Name	Certified	Current Award	Type	Inc. in Goal	Compliance Audit	Final Pmnt	Actions
1	CDOT Sub Test 3	No	\$10,000	Reg. Dealer	No		No	Add Tier 2 Sub Substitute Sub Remove Sub

[Add First Tier Subcontractor](#)

2. On the next screen, click [Get Vendor](#), then use the next screen to search for the vendor by name. It may be helpful to use the name of the compliance contact person to ensure you select the right account

Vendor Information

Vendor * [Get Vendor](#) from vendor database

3. Click [Select Vendor](#) on the right side of the screen for the appropriate firm. If the firm does not appear, you may need to contact the firm to ensure the firm has a B2G account and to determine the firm's contract compliance specialist to make your search easier. Firms may not start work on the project without first

Business Name	Phone Number	Location	Actions
CDOT SUB TEST 1	602-325-8946	PHOENIX, AZ	Select Vendor

registering in the system.

4. Once you have selected the right vendor, use the drop down menus to select the firm's compliance contact and address.

Vendor Information

Vendor * CDOT Sub Test 1 ([Change Vendor](#))

Vendor Compliance Contact * None selected ▼

Vendor Address * 101 N Central Ave, Phoenix, AZ 85014 ▼

5. Complete all required (*) fields in the Subcontractor Information section of the page.

Applicable Vendor Certifications	
Type	Organization
DBE	Colorado Department of Transportation

Indicates current certifications recognized by CDOT (DBE/ESB)

Subcontract Information	
Subcontractor Tier *	[Tier 1] Subcontractor to CDOT Prime Test 1 [Prime Contractor]
Current Prime Contract Amount	\$1,000,000.00
Subcontract Percent/Amount *	<input type="radio"/> By Amount: \$ <input type="text"/> <input type="radio"/> By Percent: <input type="text"/> %
Include in Compliance Audits? *	Enter the full amount/percent of the subcontract or the percent relative to the total amount/percent of subcontracts awarded by this subcontractor. <input type="radio"/> Yes - subcontractor is active and should be included in the period for audit. <input type="radio"/> No - subcontractor is inactive.
Count Towards Certified Goal *	<input type="radio"/> Yes - payments to this subcontractor count towards the <input type="text" value="None selected"/> Goal (Credit Type: <input type="text" value="Not Selected"/>) <input type="radio"/> No
Type of Participation *	<input checked="" type="radio"/> Subcontractor/Subcons. <input type="radio"/> Supplier - Manufacturer <input type="radio"/> Supplier - Regular Dealer <input type="radio"/> Supplier - Packager, Broker, Distrib., Wholesaler, Manuf. Rep. <input type="radio"/> Joint Venture <input type="radio"/> Fees & Commission Broker <input type="radio"/> Trucking & Hauling <input type="radio"/> Trucking & Hauling Brokerage
Work Description *	<input type="text"/>
Work Codes	Currently assigned work codes: No Codes Assigned The work codes below are from recognized certifications for this firm. Select one or more work codes that match the work this firm will be performing for this assignment and click Assign Selected Work Codes to add to this record. Click here to refresh the list if the assigned vendor or for credit status has been changed. <ul style="list-style-type: none"> <input type="checkbox"/> CO UCP NAICS 541330 Acoustical engineering consulting services <input type="checkbox"/> CO UCP NAICS 541330 Civil engineering services <input type="checkbox"/> CO UCP NAICS 541330 Construction engineering services <input type="checkbox"/> CO UCP NAICS 541330 Electrical engineering services <input type="checkbox"/> CO UCP NAICS 541330 Environmental engineering services <input type="checkbox"/> CO UCP NAICS 541330 Pollution control engineering services <input type="button" value="Assign Selected Work Codes"/> <input type="button" value="Add Other Work Codes"/>
Subcontract Award/Commit Date *	<input type="text"/> (mm/dd/yyyy)
Estimated Work Start Date *	<input type="text"/> (mm/dd/yyyy)
Estimated Work End Date	<input type="text"/> (mm/dd/yyyy)
Add vendor to existing audits for this contract? *	<input type="radio"/> Yes - add this subcontractor to all audits going back to the period of <input type="text" value="November"/> 2018 <input checked="" type="radio"/> No. Subcontractor's first audit will be the next one.
Prepaid amount	Payments Already Made: \$ <input type="text" value="0"/>
Attach File(s)	<input type="button" value="Attach File"/>
Comments *	

Is firm a sub, supplier, or trucker?

If DBE sub: Yes; DBE. If not DBE: No.

DBE with Commitment(1415) : Race Conscious
DBE without Commitment: Race Neutral

Plain English description of firm's work on project

Assign all Line Items related to firm's work.

Date of signed subcontract

Estimates of Start/End Date

Select "Yes" if sub has already started on project, otherwise select no.

First month of work

Attach 205, 1415, proof of advanced payments, signed contract as applicable

Notes about Work Codes:

- The work codes section will only pre-populate for DBE certified firms. If you need to add work codes to firms that are not DBE certified, select the Add Work Codes Button (Not pictured) to search for Work Codes and Line Items. (See Next Page)
- To Add line items for DBE certified firms, click "Add other work codes" to search the CDOT Line Items list. Only CO UCP NAICS codes will pre-populate.

6. At the bottom of the screen, click Review; Click Save on the next screen to submit.

To Add Line Items (Construction Only)

1. In the work codes section, click “Add Work Codes.” For DBE certified firms, select “Add Other Work Codes.” (Pictured on previous page).

Work Codes * Currently assigned work codes:
 No Codes Assigned
 Add Work Codes

2. Select the CDOT Line Items option from the drop down menu

Search
 CDOT Line Items ▼

3. In the search box, search by key word and/or item code. Click Search

208-00051 Storm Drain Inlet Search

4. Click Add next to the line item code you are seeking to add. Click OK in the popup box.

Actions	Code Type	Code	Code Description
Add	CDOT Line	208-00051	Storm Drain Inlet (Level I)

5. Once you are finished adding item codes to the sub record, click the return button on the upper right hand side of the screen.

Browse Codes Return

Currently assigned work codes:

⚠ CDOT Line Item:208-00051 Storm Drain Inlet (Remove)

6. Line items will appear in the work codes section of the form. Disregard the red exclamation point.

Adding Lower Tier Subs

1. From the subcontractors tab of the contract, click [Add Tier _ Sub](#)

[Contract Main](#) | [View Contract](#) | [Subcontractors](#) | [Compliance Audit List](#) | [Compliance Audit Summary](#) | [Messages](#) | [Comments](#) | [Reports](#)

Colorado Department of Transportation Status: Open
 00000: Demo 6/18/2016 - 12/30/2025
 Prime: CDOT Prime Test 1 Current Value: \$1,000,000

All subcontractors assigned to this contract are listed below.

[Refresh Page](#)

Subcontractor List								
	Subcontractor Name	Certified	Current Award	Type	Inc. in Goal	Compliance Audit	Final Pmnt	Actions
1	CDOT Sub Test 3	No	\$10,000	Reg. Dealer	No		No	Add Tier 2 Sub Substitute Sub Remove Sub

- 2.

Substitution Requests (Any Tier)

Use this form when replacing one subcontractor with another. If firm being replaced is a committed DBE sub, CDOT Form 1420 is a required attachment.

1. From the subcontractors tab of the contract, click [Substitute Sub](#)

[Refresh Page](#)

Subcontractor List								
	Subcontractor Name	Certified	Current Award	Type	Inc. in Goal	Compliance Audit	Final Pmnt	Actions
1	CDOT Sub Test 3	No	\$10,000	Reg. Dealer	No		No	Substitute Sub Remove sub

2. Complete the Substitution Information section. Attach CDOT Form 1420

Substitution Information

Select reason and enter details for the substitution. Then identify the new firm that will be providing this work. settings will be carried over; review and update all information as needed before submitting.

Subcontractor to be Substituted: **CDOT Sub Test 1**

Reason for Substitution *

Substitution Detail *

3. Complete the rest of the form using the steps on pages 12-14.

Removal Requests (Any Tier)

Use this form when eliminating a firm's work on the project PRIOR to any work being done by the firm. If firm being removed is a committed DBE sub, CDOT Form 1420 is a required attachment.

1. From the subcontractors tab of the contract, click [Remove Sub](#)

[Refresh Page](#)

Subcontractor List								
	Subcontractor Name	Certified	Current Award	Type	Inc. in Goal	Compliance Audit	Final Pmnt	Actions
1	CDOT Sub Test 3	No	\$10,000	Reg. Dealer	No		No	Add Tier 2 Sub Substitute Sub Remove Sub

2. Complete the Removal Information section. Attach CDOT Form 1420 if sub is a committed DBE.

Safety and Accident Prevention Plan

Plan Overview

The Safety and Accident Prevention Plan is project specific policy written by the prime contractor that addresses how they will comply with all of the necessary laws to protect the workers on the project as well as the traveling public.

Who is Impacted

All contractors must comply with all applicable federal, state, and local laws governing safety, health, life, and sanitation in protecting the workers on the project and the traveling public. The prime contractor must prepare a written Project Safety Management Plan which is specific to the project.

Plan Requirements

- 1) The name of the Project Safety Manager and alternate
- 2) A list of significant and/or high risk activities
- 3) What will be done to reduce the risk in project activities
- 4) When and where the project safety meetings will take place
- 5) If the project is shut down due to a safety stand down, the plan shall also include provisions for a safety meeting.
- 6) Contractors may require a subcontractor to prepare a safety plan for any activity that is considered significant or high-risk.
- 7) Procedures for safety compliance for visitors to the project
- 8) Provisions for safety inspections
- 9) Procedures to correct any violations of the plan
- 10) Procedures to come into compliance after a safety stand-down
- 11) Signed certification statement that the plan complies with all federal, state, and local laws, rules, regulations, and guidelines for safety

When the Plan is Due

This Safety and Accident Prevention Plan is due prior to the start of construction.

Regulation/Rule/Specification

FHWA 1273, Section VII. Also listed as a requirement under CDOT Standard Specifications, 107.06

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/2017-specs-book/division-100-2017-final.pdf/view>

FAQs

- 1) *Is there an example of a project Safety and Accident Prevention Plan?*
Yes, the sample Project Safety Management Plan can be found here:
<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/safety-plan-a-final-080409.doc/view>



2) *Are there other laws to be aware of for the development of the plan?*

Yes, there are many associated laws, including but not limited to: The Occupational Safety and Health Act, 29 CFR 1910, 29 CFR 1926, 23 CFR 634, Mine Safety and Health Administration (MSHA), Title 30 CFR, the “Colorado Work Zone Best Practices Safety Guide”, CFR 49, national consensus standards, and the Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).



Workplace Violence Policy

Policy Overview

CDOT upholds a requirement for non-violence on its projects.

Who is Impacted

All contractors and employees working on CDOT projects are responsible for helping to maintain a safe workplace.

When the Policy Applies

The requirement to uphold a safe, nonviolent workplace begins as soon as the contract is awarded and continues for the duration of the contract.

Regulation/Rule/Specification

The description of workplace violence is found in CDOT Standard Specifications for Road and Bridge Construction 101.95, and the policy about sanctions and/or removal of a worker who demonstrates such behavior is found in 108.07.

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What happens when an employee of the contractor demonstrates behavior that is considered violent?*

The employee shall be sanctioned as per the contractor's employment policies, and as appropriate, shall be reported to the appropriate authorities.

Equal Employment Opportunity (EEO) Policy

Policy Overview

An equal employment opportunity policy is a written statement that is a clear declaration of non-discrimination. The intent is to communicate the right of all persons in a company to work and advance based on merit, ability, and potential.

Who is Impacted

All federal contractors (including subcontractors) should have an EEO policy or accept the one outlined through the FHWA 1273. For CDOT's intents and purposes, the vast majority of contractors on CDOT projects are federal contractors.

Why the Policy is Important

Aside from the federal requirements to have an EEO policy in place, the underlying principles for an EEO policy surround the essential components of non-discrimination in the workplace as these ideas that outline equality and justice are central to a fair work environment.

Regulation/Rule/Specification

- FHWA Requirement for EEO plans
<https://www.fhwa.dot.gov/civilrights/programs/cc.cfm>
- FHWA 1273, Section II, Nondiscrimination
<https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>
- 41 CFR § 60-1.4
<https://www.gpo.gov/fdsys/pkg/CFR-2011-title41-vol1/xml/CFR-2011-title41-vol1-subtitleB-chap60.xml>

FAQs

1) *Who is considered a federal contractor?*

FHWA outlines the term federal contractors as “any person, corporation, partnership or unincorporated association that holds a FHWA direct, or federally-assisted construction contract or subcontract regardless of tier.”

2) *Do smaller prime contractors still have to have a policy?*

All prime contractors and subcontractors are required to have an EEO policy in place, regardless of the size of the business. You may use the FHWA 1273's example in whole or as a template.

3) *Can a contractor adopt the policy in the FHWA 1273 as their own?*

Yes, a contractor can use the written policy of the FHWA 1273 as its own.



- 4) *How often does the policy have to be communicated to the company's employees?*

The policy must be on letterhead and signed and dated by the company president / owner. It must be distributed and explained to all of the supervisors and managers every six months and at least once per year for all others. A dated agenda with minutes that were reviewed as well as a roster of attendees must be retained to be in compliance.

- 5) *Are there any samples for contractors to follow?*

Yes, see the Appendix of this manual for sample EEO Policies.

Affirmative Action Plan

Plan Overview

An affirmative action plan is an action-oriented plan to ensure equal employment opportunity that includes goals and timetables for achieving results.

Who is Impacted

Under Executive Order (E.O.) 11246, all contractors must demonstrate that all individuals have an equal opportunity for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. Good-faith efforts are required to eliminate past and present discrimination in all federally assisted programs and to ensure non-discriminatory practice.

When the Plan is Required

An affirmative action plan is required for all contractors on federally-assisted projects with a contract or subcontract in excess of \$10,000.

The requirement for good faith efforts to demonstrate equal employment practices exist throughout the contract in a variety of ways.

Components of the Plan

1. Description of how the company does not discriminate.
2. Establish and maintain a list of minority and female recruitment sources.
3. Collect and maintain the list of applicants. This should include names, addresses, and phone numbers along with a list of all personnel actions taken with respect to every individual.
4. Develop On-the-Job training opportunities (prime contractors).
5. Disseminate equal employment (EEO) policies (all contractors).
6. Evaluate employment decisions to ensure equal opportunity (all contractors).
7. Post EEO posters.
8. Include the EEO tag line in employment advertising.
9. Direct recruitment efforts to minority and female community organizations.
10. Ensure that all facilities and company activities are non-segregated.
11. Document and maintain records of all solicitations of offers for subcontracts from minority and female contractors and suppliers.
12. Conduct an annual review of adherence to the company's EEO policies and affirmative action obligations.

Regulation/Rule/Specification

The 23 CFR Part 230 and the 41 CFR, Part 60-4 require equal opportunity. More information is available at

<https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=3b71cb5b215c393fe910604d33c%209fed1&rgn=div5&view=txt&node=41:1.2.3.1.4&idno=41>



E.O. 11246 also requires federal contractors and federal-aid contractors to take steps to ensure affirmative action.

<https://www.dol.gov/ofccp/TAguides/sbguide.htm>

FAQs

1) *Are an Affirmative Action Plan (AAP) and an Equal Employment Opportunity (EEO) Policy different?*

Yes. An EEO policy announces a non-discrimination mandate. An AAP is a document of how a contractor will achieve that policy using time tables and goals.

2) *Is there a place where contractors can see a sample of an AAP?*

A sample AAP is available in the Appendix of this manual. Additionally, the OFCCP has a sample AAP on its website,

https://www.dol.gov/ofccp/regs/compliance/AAPs/Sample_AAP_final_JRF_QA_508c.pdf

Nondiscrimination: Title VI of the Civil Rights Act of 1964

Title VI Overview

Pursuant to Title VI of the Civil Rights Act of 1964, it is CDOT's policy that no person shall on the grounds of race, color, nation origin, sex, disability, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any operation of CDOT to which CDOT extends federal financial assistance.

Who is Impacted

Title VI protects the public and other external stakeholders against discrimination by CDOT staff, CDOT project staff, contractors or anyone doing business with CDOT.

Where to Direct Complaints

If there is a complaint about discrimination on a CDOT project, please contact the Title VI Specialist, (303) 757-9234, in the CDOT Civil Rights and Business Resource Center.

Regulation/Rule/Specification

The regulations contained in 49 CFR, Title 49, Subtitle A, Part 21 outlines that discrimination is prohibited by law.

<https://www.gpo.gov/fdsys/pkg/CFR-2012-title49-vol1/xml/CFR-2012-title49-vol1-part21.xml>

FAQs

1) *How does Title VI apply to working with CDOT?*

CDOT's Title VI program prohibits discrimination based on race, color, nation origin, sex, disability, or age as it relates to any CDOT program or activity. All federally assisted contracts must include the USDOT Title VI Assurances, which can be found here:

<https://www.codot.gov/business/civilrights/titlevi/title-vi-assets/non-discrimination-assurance/view>

2) *How does national origin protection apply to working with CDOT?*

National origin discrimination can result from the failure to provide meaningful access to CDOT's programs or activities for Limited English Proficiency persons (individuals who have a limited ability to read, write, speak, or understand English). Language can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by CDOT. Contractors are responsible for complying with CDOT's Title VI Program and all limited English proficiency (LEP) requirements. As part of that assurance, the contractor cannot participate in (directly or indirectly) any discrimination against any group, which includes LEP populations.



3) *What is the difference between Title VI and Title VII?*

Title VII prohibits discrimination in *employment practices* based on race, color, sex, national origin or religion, whereas Title VI prohibits discrimination related to programs or activities receiving federal funds. If discrimination is reported on a CDOT project, the Prime Contractor is required to investigate. If there is a report of discrimination within the bidding processes, CDOT would then investigate the situation and review its policies. As a steward of Federal funds, CDOT complies with all FHWA nondiscrimination requirements.



On-the-Job Training (OJT) Program

Program Overview

The OJT program is an implementation of a federal job training policy that aims to assure “the increased participation of minority groups and disadvantaged persons and women in all phases of the highway construction industry.” Construction contractors must therefore meet OJT goals on federal projects.

Who is Impacted

Prime contractors are held to the OJT goal requirements that are outlined in the CDOT advertisement documents.

How CDOT Tracks OJT Participation

CDOT’s uses three forms and the electronic payroll system LCPtracker to monitor OJT program participation. All three forms must be filled out completely, approved by CDOT, and uploaded into LCPtracker in order to get OJT project goal credit for the trainee’s hours.

- 1) CDOT Form 1337 - Contractor Commitment to Meet OJT Requirements Submitted at the preconstruction meeting with a copy of the training plan or collective bargaining agreements.
- 2) CDOT Form 838 - OJT /Trainee Apprentice Record
This form requires approval from the Region Civil Rights Office. For trainees and apprentices, the rates and levels of all participants must be included. For all union participants, union rate sheets must be included.
- 3) CDOT Form 832 - Trainee Status and Evaluation Report. This form is submitted monthly to the project engineer for approval.

Please note: For any project that requires manual OJT tracking (possibly local agency projects and/or legacy projects), these hours are subject to audit at CDOT’s discretion. Please make sure that the numbers add up and can be checked against certified payrolls in order to avoid paying journeyman wages.

What Documentation is Required

The 1337, the 838, and the 832 should all be sent to the project engineer. CDOT also needs a copy of either the approved training plan (if using a training plan of your own) or the collective bargaining agreement with the wage sheet.

Regulation/Rule/Specification

This program is an implementation of 23 USC 140(A) and 23 CFR 230.107 However, for specific CDOT requirements, please visit the CDOT OJT website.

<https://www.codot.gov/business/civilrights/ojt>



FAQs

1) *What happens if the prime contractor cannot meet the OJT goal?*

First and foremost, please begin talking with the CDOT Region Civil Rights Office early. In the event that the OJT goal is not met, there will likely be a disincentive applied at the end of the project. For more information about how that formula is applied, please see the current OJT Specification at the web address listed on the page preceding this one.

2) *Can a trainee be entered into the training program and still be paid full journey wages?*

Yes, a contractor can always pay above the required minimum amount.

3) *Can a trainee be entered into the training program and have the contractor pay at reduced wages?*

Yes, contractors will outline the percentage of the base rate that each employee should be paid or they should provide the wage sheets.

4) *Can a prime contractor add a trainee/apprentice after the project has started?*

Yes, contractors can add an approved trainee at any point on the project. Contractors will need to fill out all forms for all participants so the hours can be accurately tracked.

There are two mandatory steps for counting apprentices/trainees within LCPtracker. All apprentices and trainees must be tagged (by the Civil Rights personnel) and must be entered into the system using an apprentice/trainee code within the payroll. If there is no apprentice/trainee code within the project, contact the Civil Rights Region Specialist.

5) *Can the OJT hours of subcontractors count toward the project goal?*

Yes, the OJT hours of subcontractors can count toward the project OJT goal. The subcontractor's trainees will need the same forms filled out.

6) *What are the easiest ways to make sure that there are no delays in utilizing OJT?*

The easiest way is to make sure that the forms are all submitted timely. It is also the prime contractor's responsibility to provide the latest union agreements so that CDOT can enter those wages as soon as possible. If you do not hear back from Region personnel or from the project engineer within seven calendar days, please follow up so action can be taken.

Section 4: Active Project Compliance

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Contacts

Active Project Compliance: Contact your RCRO

Required Bulletin Board Postings

Program Overview

Job sites must have a bulletin board containing the EEO policy, wage decisions, and other posters that are required by federal regulations and the contract. Due to Colorado's large Spanish speaking population, applicable posters in Spanish are recommended and may be required. The bulletin board must be posted on the project site the day that work begins, and posters should be regularly monitored to make sure that they are legible and that no posters are missing or faded.

Who is Impacted

The prime contractor is responsible for providing a main bulletin board at the project site that is prominent and accessible to all employees and lower tier contractors.

What Posters are Required

CDOT has a list of all of the required bulletin board postings

<https://www.codot.gov/business/bidding/bulletin-board-postings>

Regulation/Rule/Specification

DOL guidance is available at

<https://www.dol.gov/general/topics/posters>

CDLE guidance is available at

<https://www.colorado.gov/pacific/cdle/posters>

FHWA requirements are available at

<https://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

FAQs

1) *The project doesn't have a staging area. Can the prime contractor just use a binder to keep all of the posters?*

No. Both US DOL and FHWA prohibit that practice; posters must be publicly visible at all times.

2) *Can the prime contractor provide the law and wage information electronically?*

No, notices and posters must be displayed in "conspicuous places, available to employees and applicants for employment..."

3) *How often should the bulletin board be checked for accuracy?*

The bulletin board is a requirement that often has updates. Changes can be made to the bulletin board frequently throughout the year. At a minimum it should be checked for accuracy on a quarterly basis.

Americans with Disabilities Act (ADA) Requirements

Program Overview

The ADA is a law that prohibits discrimination on the basis of disability.

Who is Impacted

This law is pertinent to all contractors.

How ADA Applies

Title I and Title II of the ADA are relevant to construction projects.

Title 1 deals with employment. Disability discrimination occurs when an employer or other entity treats a qualified individual with a disability who is an employee or applicant unfavorably because she has a disability. Learn more:

<https://www.eeoc.gov/eeoc/history/ada25th/index.cfm>

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because she has a history of a disability (such as cancer that is controlled or in remission) or because she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if she does not have such an impairment).

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer (“undue hardship”).

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

The EEOC offers technical assistance related to ADA:

<https://www.eeoc.gov/laws/types/disability.cfm>

Title 2 of the ADA covers all activities of state and local governments and public transportation and requires that people with disabilities have an equal opportunity to benefit from programs, services, and activities.

Some of the activities included in these policies are temporary traffic control, crosswalk closure, pedestrian detours, and other accommodated accessibility for people with disabilities.

Please see CDOT’s ADA website for more information:

<https://www.codot.gov/business/civilrights/ada>



Regulation/Rule/Specification

The FHWA 1273 was revised in 2012 and with that came the obligation under Section II, paragraph 8 that outlined that the contractor must be familiar with the requirements and comply with the Americans with Disabilities Act both at the home office and on the construction site. More information is available at <https://www.fhwa.dot.gov/programadmin/contracts/1273/1273.pdf>

ADA Requirements and Technical Assistance

https://www.ada.gov/ada_req_ta.htm



Contractor Compliance Reviews

Overview

Contract compliance reviews (CCRs) are reports that are used to determine if a contractor is operating within the confines of the federal requirements.

Who is Impacted

Contractors who have been chosen for a compliance review will be notified by the Region Civil Rights Office.

What is Required

As part of CDOT's Stewardship Agreement with FHWA, CDOT is required to conduct compliance reviews of the EEO policies and other related practices. CCRs are also required by 23 CFR 230.

Anytime a contractor is working on a project, they can be subject to a compliance review or a shorter version of it called a program quality review. The contractor can also be subjected to a review if there are questions about their practices, policies, or procedures violating some aspect of CDOT or DOL regulation. Typically, these reviews are not done any more frequently than once every three years.

Regulation/Rule/Specification

The requirement to conduct contract compliance reviews is outlined in 23 CFR 230, CCR Requirements, available at <https://www.govinfo.gov/content/pkg/CFR-2010-title23-vol1/xml/CFR-2010-title23-vol1.xml>

FAQs

- 1) *How will the prime contractor know if their firm has been chosen for a review?*
CDOT will send a letter in the mail that notifies the company that they have been chosen for a review. This letter will outline the basic information regarding the review, and it will also include a request for the submission of a large amount of information, which is located in the Appendix of this manual.
- 2) *What happens if the company refuses to participate in the review?*
The contractor will be held in non-compliance and will likely face financial progress estimate withholding until CDOT gets the required information. If there is no effort to provide the necessary information, the contractor could be disbarred.
- 3) *Can the date of the compliance review be changed?*
While recognizing the importance of these types of reviews, CDOT also understands that business goes on and can be flexible with providing other date alternatives.

4) *What happens if a contractor is found out of compliance?*

The company will have a period time to review, update, and “fix” those areas that need attention. If those necessary changes are made, the company will have a new determination of being in compliance, and there will be no further issues with it. If those changes aren’t made, a determination of non-compliance will be made, and there are several consequences that could take place including financial disincentives and up to disbarment.



FHWA 1391: Federal-Aid Highway Construction Contractors Annual EEO Report

Form Overview

The 1391 is an annual FHWA report that measures the work participation of all contractors in the month of July. The intent of this report is to evaluate a contractor's effectiveness in terms of the Equal Employment Opportunity.

Who is Impacted

All contractors and subcontractors who have contracts that equal or exceed \$10,000 and are active on federal-aid projects during any week in July (that are NOT included in LCPtracker) must fill out the 1391 in Excel spreadsheet and submit it to the Civil Rights and Business Resource Center. Those that are part of LCPtracker will automatically have their payroll information tallied per their submitted payrolls.

What is Required

This form is filled out for any active construction work in the month of July and it must be compiled and submitted to FHWA in September. This form and information is not needed for professional services.

ONLY projects that are NOT in LCPtracker need report this information through the submission of Excel spreadsheets. For every other project that is in LCPtracker, this information will be gathered automatically.

Regulation/Rule/Specification

23 CFR, Appendix C to Subpart A of Part 230

[https://www.ecfr.gov/cgi-bin/text-](https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.3.8#ap23.1.230_1121.c)

[idx?rgn=div5&node=23:1.0.1.3.8#ap23.1.230_1121.c.](https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.3.8#ap23.1.230_1121.c)

FAQs

1) *What if subcontractors are not filling out the forms?*

Please notify the project engineer so that s/he can be aware of the problem and address it at a project level. Please note that the prime is always responsible for the compliance of the sub, and if a sub is not compliant with the requirement to fill out the necessary paperwork associated with the project, financial disincentives may apply.

2) *If the prime contractor is on a federal-aid project that is NOT using LCPtracker (i.e., local agency federal aid project), can a PDF version of the Excel form be submitted with the same information?*

No, the submission of the forms must be in Excel so that they can be totaled. **All forms that are submitted through a PDF version will be rejected.**

- 3) *Does the CDOT project number refer to the five-digit sub-account number or the long number with letters, numbers, and dashes?*

For CDOT purposes, always refer to the project number with the five-digit (sub- account) number.

- 4) *What needs to be reported?*

The data requested is for the project workforce only. This information is NOT required for state projects, nor is it needed for professional services.

- 5) *Is there a copy of the Form 1391?*

A copy of the Form 1391 can be found in the Appendix of this manual. Check the CDOT website for the latest form before filing any reports for the Form 1391.

Prompt Payment to Subcontractors

Prompt Payment Overview

CDOT requires prime contractors to ensure that payment is released promptly at all tiers of the contract.

Who is Impacted

All contractors with lower tier subcontractors or suppliers are contractually obligated to pay their subcontractors and suppliers promptly.

What is Required

USDOT requires CDOT to establish prompt pay procedures. CDOT's contract specification includes the specific seven day pay-when-paid requirement, which means prime contractors must pay subcontractors within seven days of receiving payment for the subcontractors' work from CDOT. Primes must also ensure that each tier of subcontractor abides by the seven-day rule.

Regulation/Rule/Specification

The federal prompt payment requirements can be found at 49 CFR 26,

<https://www.ecfr.gov/cgi-bin/text-idx?SID=70c02b78d4e514ad2dc705d951fc6377&mc=t%20rue&node=pt49.1.26&rgn=dv5>

CDOT's rule is included in Section 109.06 of the contract specification.

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

- 1) *What if the prime contractor has good cause to withhold the subcontractor's payment?*

If the prime contractor has good cause to withhold a subcontractor's progress payment, the prime contractor must notify the subcontractor in writing specifying the amount being withheld and providing adequate justification for withholding the payment. The notice must also clearly state what conditions the subcontractor must meet to receive payment. The notice is due within 7 days of receiving your payment from CDOT (i.e. when prompt payment would be due if not for the withholding).

- 2) *When will the CDOT engineers authorize partial payment?*

CDOT will issue partial payments monthly based on the progress estimates. These estimates are created by the project engineer based on the value of work performed, materials placed in accordance with the contract, and the value of the materials on hand.

Prompt Payment Reporting via B2GNow

Reporting Overview

Prompt payment reporting is the mechanism through which contractors notify CDOT of any payment received and paid during the previous month.

Who is Impacted

All prime contractors, subcontractors, and suppliers on a CDOT contract must complete monthly Prompt Payment Audits in B2GNow.

What is Required

CDOT's contract specification outlines requirements for prompt payment reporting. The online system B2GNow has replaced CDOT Forms 1418 and 1419 (excluding local agency projects). Prime contractors must report all payments received from CDOT and paid to first tier subcontractors. Every lower tier must confirm or dispute reported payments from higher tiers, report any withheld retainage, and report any payments to tiers immediately beneath it. Prime contractors are responsible for ensuring compliance with CDOT's reporting requirements at all tiers.

There are two components to prompt payment: 1) All prime and subprime contractors (subprime contractors being those who subcontract out any of their work to materials suppliers or another vendor) must report payment made by the 15th of the month 2) Payment confirmations must be completed by subcontractors within 15 days of receiving the system-generated notice of the audit. System-generated notices are sent on the first of every month.

Regulation/Rule/Specification

The federal prompt payment requirements can be found at 49 CFR 26, <https://www.ecfr.gov/cgi-bin/text-idx?SID=70c02b78d4e514ad2dc705d951fc6377&mc=t%20rue&node=pt49.1.26&rgn=div5>

CDOT's rule is included in Section 109.06 of the contract specification. <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What are subprime contractors?*

Any contractor other than the prime contractor who has lower tier subcontractors or suppliers is considered a subprime contractor. The subprime designator means a firm is a subcontractor to the prime contractor on the contract but is acting as a prime contractor for its lower tiers.

2) *Should a prime contractor report payment to their second tier subcontractors to close the audit?*

Contractors should not report payment information to subcontractors they do not pay directly. It is the responsibility of each contractor to report payment information to their lower tiers. The audit will remain open until all of the subcontractors have reported, but CDOT will be able to see why the audit is unresolved.

3) *What pay period is the audit capturing?*

The monthly audit captures all payments actually received or released during the Audit Period. Audit Periods are calendar months. They are not linked to invoice dates, pay estimates, or work periods.

4) *What if a prime contractor receives multiple payments in one month or pays one subcontractor twice in one calendar month?*

Contractors should report the totals of all payment activity that occurred during the Audit Period. When asked for the payment date, record the date of the first payment.

5) *What is a discrepancy in B2G?*

Discrepancies are created in B2G when higher and lower tier contractors enter different payment amounts during the monthly prompt payment audit. Sometimes these occur as a result of incorrect data entry, but they can also reflect instances of disputed payment or withholding. For more information on notifying CDOT of a discrepancy, please review the next two sections of this manual, Confirming or Disputing Payment for Subcontractors.

6) *What documentation is required to resolve a discrepancy in B2G?*

To resolve a discrepancy, contractors will need to provide proof that the payment was received from or released to the other party. Proof may be both sides of a cancelled check, an EFT receipt, or some other documentation showing the payment was received or released on the claimed date.

7) *What do prime contractors need to include in the comments section of the report?*

When reporting payments made to lower tiers, prime contractors should include the check number, EFT reference, or other proof of payment. If the prime contractor is withholding payment for any reason, provide a copy of the notice promptly sent to the subcontractor. When disputing the payment reported by a higher tier, include a detailed description of the situation as you understand it.

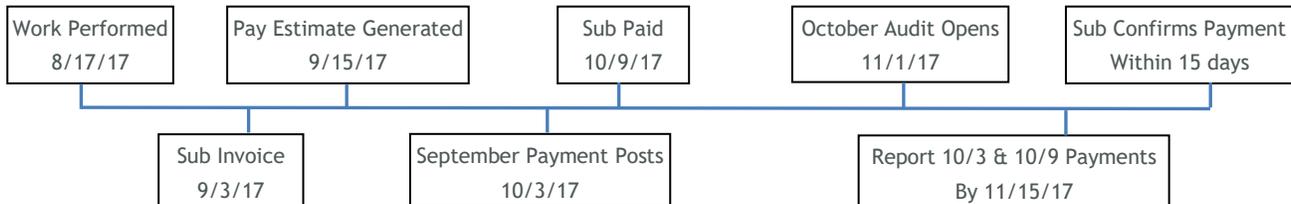
8) *If everyone has to report payments made to lower tier firms by the 15th of the month, does that contradict CDOT's seven day pay-when-paid rule?*

No. The reporting system has no effect on when payments are made or due. Prompt payment reporting is simply a historic data collection tool; it collects data about the previous month.

Monthly Prompt Payment Reports (B2G System Audits)

Prime Contractors

Monthly Audit reports are automatically generated on the first of every month, and request information about the actual payment made and received during the Audit Period regardless of the associated invoice or pay estimate date. For example, the Audit report for October 2017 is generated on November 1, 2017 and is requesting information about money paid in and out in the month of October. Most likely, this payments reflect amounts from the September Pay Estimate and September invoices. See below:

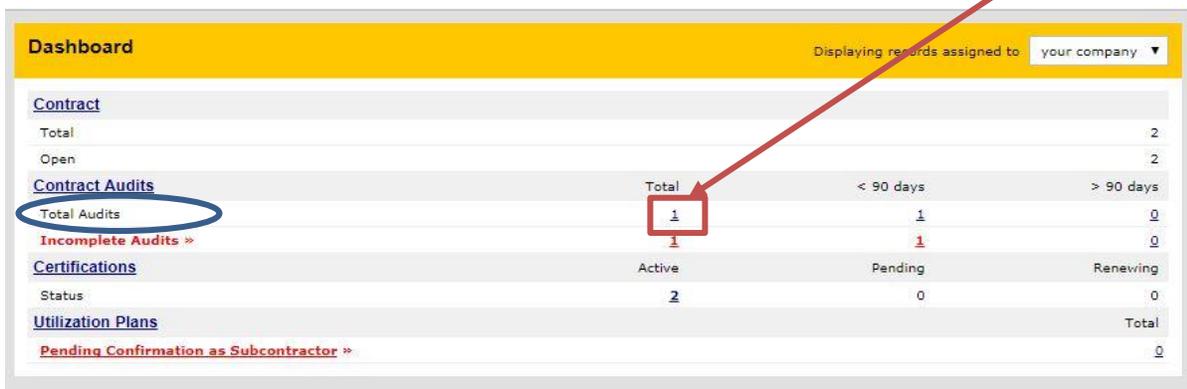


To complete the Audit:

1. Login to the B2G System at <http://contracts.codot.gov/>



2. On the home screen, find Incomplete Audits in your Dashboard and click on the red



Dashboard		Displaying records assigned to: your company		
Contract				
Total				2
Open				2
Contract Audits				
Total Audits		Total	< 90 days	> 90 days
Incomplete Audits »		1	1	0
Certifications				
Status	Active	Pending	Renewing	Total
	2	0	0	
Utilization Plans				
Pending Confirmation as Subcontractor »				0

number.

3. Click on “Incomplete” in the left-most column of the Audit you wish to complete



To resort click on column title. To filter click on the drop down menu.

Status	Audit Period	Contract Number & Title
Incomplete	All	All
Incomplete	October 2017	Test2: TEST2

Note: You may also enter the Audit through an individual contract. If you do, the Audit List will look like the following. To enter the Audit from this screen, select “View Audit” on the far right.

4. Once you have entered the Audit Notice, report payment from CDOT
 - a. Click “Report Payment Received from Colorado Dept. of Transportation”

Submit a response for each item listed below by clicking each link. It is possible that some actions are not available at a specific time. As the prime contractor your responsibility is to report payments made to subcontractors and payments received from Colorado Department of Transportation.

Audit Actions	Category	Action Required & Response Due Date
Report payment received from Colorado Department of Transportation	Report 3 subcontractor payments	due by 11/16/2017 audit lock on 8/16/2291 due by 11/16/2017 audit lock on 8/16/2291

Compliance Officer Information		Buyer/Project Manager Information	
Contact Person	Erica Downey	Contact Person	Contact Administrator
Organization	Colorado Department of Transportation	Department	Region 1
User Number	2000048-007	User Number	1003211-001

- b. Click “Report Payment to Prime.”

Audit Information	
Audit Response Status	Not complete 3 sub responses to be submitted; payment to prime to be submitted Reporting deadline is 11/16/2017 Audit will be locked 8/16/2291
Audit Period	October 2017
Payment to Prime	Report Payment to Prime
Marked As Final Audit?	No (mark audit as final)

Do not select “mark Audit as final” until you have received final payment (not including retainage) from CDOT and paid out all subs.

- c. Complete required fields (*), then click Save. You will automatically return to the Audit.

5. Report Payment to all FIRST TIER Subs

- a. In the middle of the screen, select “Submit ALL Incomplete Records.” You may also enter records individually by clicking “Submit Response” in the Actions

Mark 3 Remaining Subcontractors as Zero Mark Audit as Final

Submit ALL Incomplete Records Report Error

Subcontractor	Certified	Type	Inc. in Goal	Actions	Paid Amount in October 2017	Confirmed by Sub	Total To October 2017	Contract Goal	Actual Percent
1 CDOT Sub Test 2 CDOT Sub Test 2 cdot@cdot.com P 602-927-2254	✓	Sub	100%	Submit Response	Not Reported	--	\$0.00	5.000%	0.000%
2 CDOT Sub Test 3 CDOT Sub Test 3 cdot@cdot.com P 602-927-2254	✓	Sub	100%	Submit Response	Not Reported	--	\$0.00	5.000%	0.000%
1 CDOT Sub 3 CDOT Sub Test 2 cdot@cdot.com P 602-927-2254	✓	Sub	100%	Submit Response	Not Reported	--	\$0.00	0.200%	0.000%

Click subcontractor name to view payment history for this contract. Click contact person's name to send them a message.

- b. Complete fields for all FIRST TIER subs only.

Subcontractor	Total Through October 2018	Payment for November 2018	Payment Date & Prompt Payment (within 7 days)	Final Payment?	Attachments for CDOT
1 DOT Sub Test 1	\$1,000.00	\$	O Y O N N/A	<input type="checkbox"/>	Payment Detail: Comments: Doc
2 CDOT Sub Test 2 Leave Blank (2nd Tier Sub)	\$0.00	\$	O Y O N N/A	<input type="checkbox"/>	Check No. Comments to CDOT (Not visible to Sub)
1 DOT Sub Test 3	\$0.00	\$	O Y O N N/A	<input type="checkbox"/>	Was payment prompt?

Sub's work is done. Remove sub from future

Save Return to Vendor List

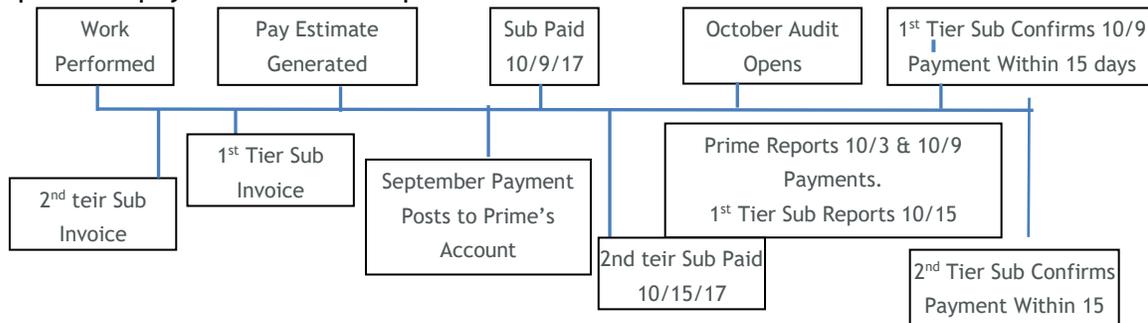
- c. Select “Save.”
 - d. If payment information has been entered for all subs (at all tiers) you will receive an audit confirmation. You may click “Return to Audit” to verify your input and edit if necessary.

- e. If any subs at any tier are missing payment information, you will automatically be returned to the Audit. Once you confirm that no first tier subs are missing payment information, you have completed the Audit.
6. Click “Home” in the Side Menu on the left to exit the Audit. Once you have saved the information, no further action is required unless a lower tier reports a discrepancy.



Subcontractors

Monthly Audit reports are automatically created and sent to the prime contractor and any sub-prime contractors (subcontractor with any lower tier contractors or supplier) on the first of every month. These audits are released to lower tier subcontractors as soon as the prime contractor or sub-prime contractor reports the payment made to its lower tiers. Contractors at any tier have fifteen days to complete the audit from the day it is released to them for their confirmation. Audits request information about the actual payments made and received during the Audit Period. This report does not consider what month the work was performed or invoiced - only paid. For example, the Audit report for October 2017 is generated and released to the prime contractor and sub-prime contractors on November 1, 2017 to collect their payment information. It is requesting information about money out in the month of October. Most likely these payments reflect amounts from the September pay estimate and September invoices. See below.

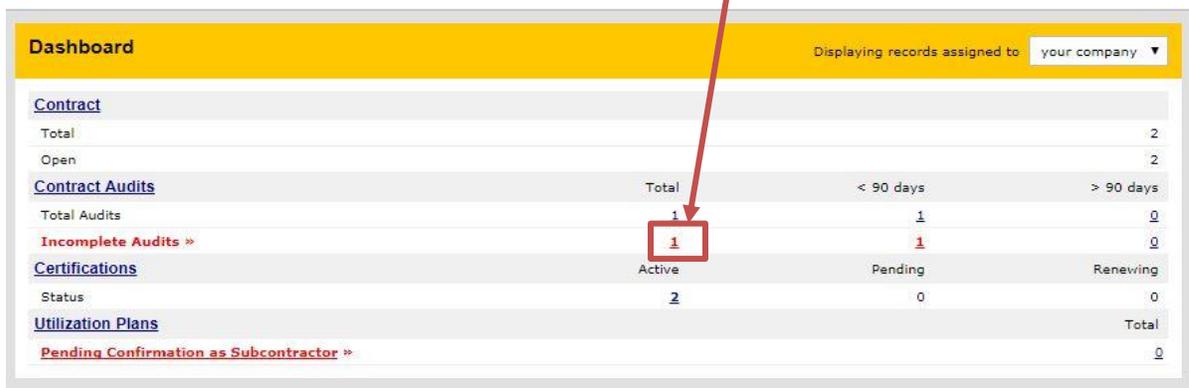


Accessing the Audit

1. By the 15th of every month, login to the B2G System at <http://contracts.codot.gov/>.



2. On the home screen in your Dashboard, Click on the red number under the Total column



Dashboard				Displaying records assigned to: your_company	
Contract					
Total					2
Open					2
Contract Audits					
Total Audits	Total	< 90 days	> 90 days		
	1	1	0		
Incomplete Audits »					
	1	1	0		
Certifications					
Status	Active	Pending	Renewing		
	2	0	0		
Utilization Plans					
Pending Confirmation as Subcontractor »					0

3. Click on “Incomplete” in the left-most column of the Audit you wish to complete

To **resort** click on column title. To **filter** click on the drop down menu.

Status	Audit Period	Contract Number & Title
Incomplete	All	All
Incomplete	October 2017	Test2: TEST2

Note: You may also enter the Audit through an individual contract. If you do, the Audit List will look like the following. To enter the Audit from this screen, select “View Audit” on the far right.

Audit Period	Status	Paid to Prime	Audit Reference	Date Posted	View Audit
October 2017	Incomplete	\$0.00		11/1/2017	View Audit

Reporting Payment (all subcontractors with lower tier subcontractors or suppliers)

- Report Payment to all next tier subcontractors and suppliers by the 15th of the month.
 - In the Audit Actions box, click “Report subcontractor payment”

Category	Sub Payment confirmed
Tier 1 Subcontractor to CDOT Prime Test 1	Sub prime: Report 1 subcontractor payment
Tier 1 Subcontractor to CDOT Prime Test 1	Sub: CDOT Prime Test 1 has not reported the payment made to you

- On the next screen, select “Submit ALL Incomplete Records.” You may also enter records individually by clicking “Submit Response” in the Actions column for each sub.

Mark 3 Remaining Subcontractors as Zero Mark Audit as Final

Submit ALL Incomplete Records Report Error

Subcontractor	Certified	Type	Inc. in Goal	Actions	Paid Amount in October 2017	Confirmed by Sub	Total To October 2017	Contract Goal	Actual Percent
CDOT Sub 2	Yes	Sub	100%	Submit Response	Not Reported	--	\$0.00	3.000%	0.000%
CDOT Sub Test 2	Yes	Sub	No	Submit Response	Not Reported	--	\$0.00	3.000%	0.000%
CDOT Sub 2	Yes	Sub	100%	Submit Response	Not Reported	--	\$0.00	0.200%	0.000%

Click subcontractor name to view payment history for this contract. Click contact person's name to send them a message.

- Complete the fields for all subs and suppliers with whom you contract directly. If your subs have even lower tier subs, DO NOT fill out that payment information.

Subcontractor	Total Through October 2018	Payment for November 2018	Payment Date & Prompt Payment (within 7 days)	Final Payment?	Attachments for CDOT	Comments to CDOT (Not visible to Sub)
CDOT Sub Test 1	\$1,000.00	\$	Y <input type="radio"/> N <input type="radio"/> N/A <input type="radio"/>	<input type="checkbox"/>	Payment Detail: <input type="text"/> <input type="button" value="Done"/>	
CDOT Sub Test 2 Leave Blank (2 nd Tier Sub)	\$0.00	\$	Y <input type="radio"/> N <input type="radio"/> N/A <input type="radio"/>	<input type="checkbox"/>	Check No. <input type="text"/>	
CDOT Sub Test 3	\$0.00	\$	Y <input type="radio"/> N <input type="radio"/> N/A <input type="radio"/>	<input type="checkbox"/>	Was payment prompt? (N/A if \$0)	

Sub's work is done. Remove sub from future audits.

Subcontractor: CDOT Sub Test 1 Total Amount Paid to sub: \$1,000.00 Date paid: Check No.: Was payment prompt? (N/A if \$0)

Attachments for CDOT Comments to CDOT (Not visible to Sub)

Save Return to Vendor List

- Select “Save.”

- e. If payment information has been entered for all subs (at all tiers) below you, you will receive an audit confirmation. You may click “Return to Audit” to verify your input and edit if necessary.
 - f. If any subs at any tier below you are missing payment information, you will automatically be returned to the Audit. Once you confirm that no next tier subs are missing payment information, you have completed the Audit.
2. If the contractor above you has already reported its payment to your firm, continue to step 1(a) below.

If the contractor has not reported its payment to your firm, select the home button in the top, left corner of the screen to navigate away from the Audit. You will need to login again later in the month to confirm or report a discrepancy related to your payment. Complete the confirmation step once you receive notice from CDOT Civil Rights that your higher tier contractor has completed the reporting step.



Confirming or Disputing Payment

Within 15 days of receiving notice from CDOT Civil Rights that the prime has reported, login to the system to confirm your payment. See Accessing the Audit above for help getting to this step.

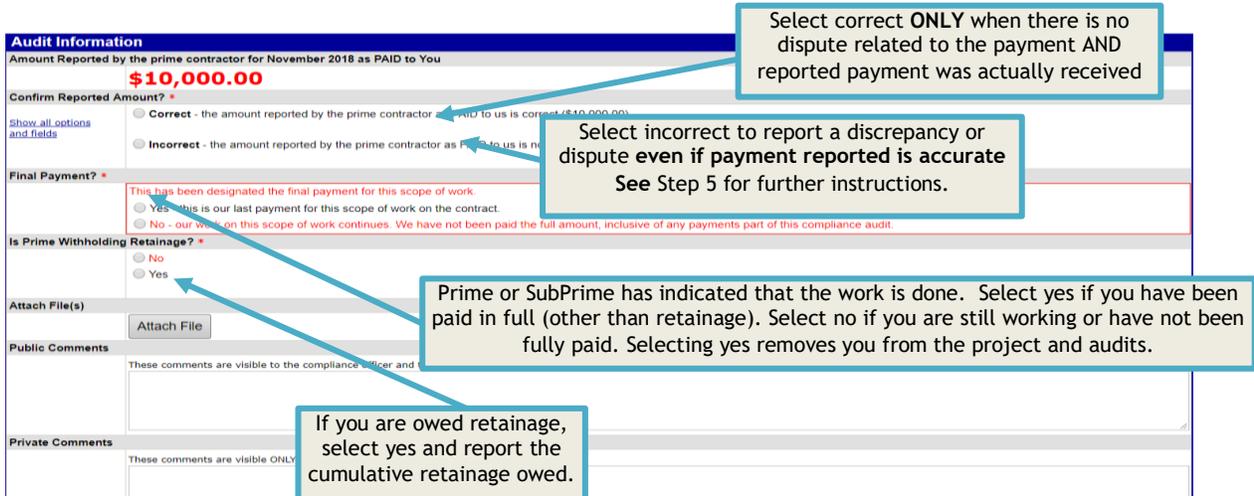
1. Once you have entered the Audit, confirm payment from Prime. (This step is for situations where there are no payment disputes. If payment amount is disputed or withheld, skip this step and proceed to Step 2).

a. Click “Confirm Payment Received”

Contract Main View Contract Subcontractors Compliance Audit List Messages Comments Reports		Colorado Department of Transportation Test 2: 15019 Prime: CDOT Prime Test 1		Status: Open 10/26/2017 - 02/28/2020 Current Value: \$10,000,000
This is an audit notice for the contract listed below. Submit a response for each item listed below by clicking each link in the Audit Actions table. It is possible that some actions are not available at a specific time due to pending reports from other contractors.				
Audit Information				
Time Period	October 2017			
Date & Time Posted	Local:	11/1/2017 6:10:54 AM CDOT		System: 11/1/2017 6:10:54 AM CDOT
You are assigned to this contract in multiple capacities. Submit a response for each item listed below by clicking each link. It is possible that some actions are not available at a specific time. As a subprime your responsibility is to confirm payments made to you by the prime or higher level subcontractors and report payments made by you to lower subcontractor levels. As a subcontractor your responsibility is to confirm payments made to you by the prime or higher level subcontractors.				
Audit Actions				
Tier 1 Subcontractor to CDOT Prime Test 1	Category	Sub: Confirm payment received	Action Required & Response Due Date	
		SubPrime: Report 1 subcontractor payment	due by 11/21/2017 audit lock on 8/21/2291	
Tier 1 Subcontractor to CDOT Prime Test 1		Sub: Confirm payment received	due by 11/16/2017 audit lock on 8/16/2229	
			due by 11/21/2017 audit lock on 8/21/2291	
Compliance Officer Information			Buyer/Project Manager Information	
Contact Person	Erica Dowdax		Contact Person	Contact Administrator
Organization	Colorado Department of Transportation		Department	Region 1
User Number	3000046.057		User Number	10003211.001

- b. Complete the form. Please note, if you report that the payment information is correct, you waive CDOT’s involvement in resolving any related payment dispute or discrepancy. Please see Step 5 to learn how to report that payment is being withheld or disputed before completing this form.

c. Reporting a Payment Dispute



Audit Information
Amount Reported by the prime contractor for November 2018 as PAID to You: **\$10,000.00**

Confirm Reported Amount? *

- Correct - the amount reported by the prime contractor as PAID to us is correct. (\$10,000.00)
- Incorrect - the amount reported by the prime contractor as PAID to us is not correct.

Final Payment? *

This has been designated the final payment for this scope of work.

- Yes - this is our last payment for this scope of work on the contract.
- No - our work on this scope of work continues. We have not been paid the full amount, inclusive of any payments part of this compliance audit.

Is Prime Withholding Retainage? *

- No
- Yes

Attach File(s)

Public Comments

Private Comments

Callouts:

- Select correct **ONLY** when there is no dispute related to the payment **AND** reported payment was actually received
- Select incorrect to report a discrepancy or dispute even if payment reported is accurate. See Step 5 for further instructions.
- Prime or SubPrime has indicated that the work is done. Select yes if you have been paid in full (other than retainage). Select no if you are still working or have not been fully paid. Selecting yes removes you from the project and audits.
- If you are owed retainage, select yes and report the cumulative retainage owed.

d. Complete required fields (*), then click Save.

e. On the following screen, click “Return to Audit Notice”

2. If payment is disputed or withheld, you must report a discrepancy within 15 days of receiving notice of the audit. Discrepancies are automatically reported to CDOT.

a. From the main Audit screen, Click “Confirm Payment Received”



Tier	Category	Action Required & Response Due Date
Tier 1 Subcontractor to CDOT Prime Test 1	Sub: Confirm payment received	due by 11/21/2017 audit lock on 8/21/2021
Tier 1 Subcontractor to CDOT Prime Test 1	SubPrime: Report 1 subcontractor payment	due by 11/16/2017 audit lock on 8/16/2021
Tier 1 Subcontractor to CDOT Prime Test 1	Sub: Confirm payment received	due by 11/21/2017 audit lock on 8/21/2021

b. In the Audit Information box, select “Incorrect”



Audit Information
Amount Reported by the prime contractor for October 2017 as PAID to You: **\$0.00**

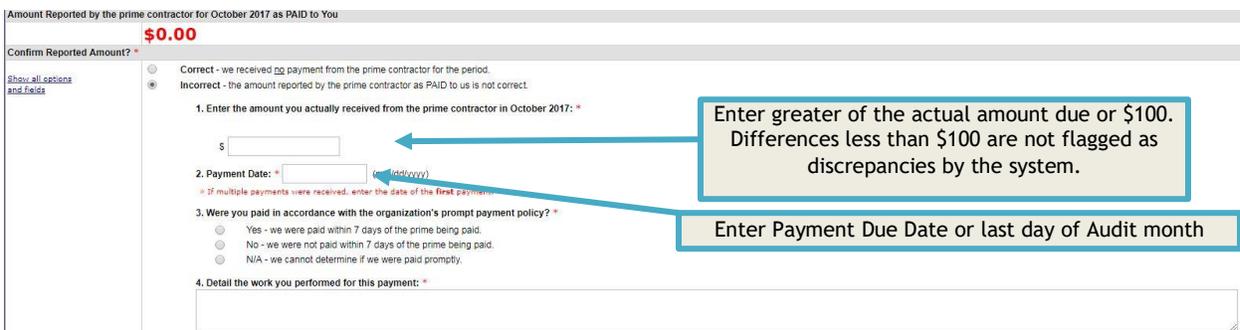
Confirm Reported Amount? *

- Correct - we received payment from the prime contractor for the period.
- Incorrect - the amount reported by the prime contractor as PAID to us is not correct.

Is Prime Withholding Retainage? *

- No

i) If the higher tier reported \$0.00, complete the form. Note: You must report an amount at least \$100 different from the amount you are asked to confirm. Differences less than \$100 are not flagged by the system even if marked incorrect.



Amount Reported by the prime contractor for October 2017 as PAID to You: **\$0.00**

Confirm Reported Amount? *

- Correct - we received payment from the prime contractor for the period.
- Incorrect - the amount reported by the prime contractor as PAID to us is not correct.

1. Enter the amount you actually received from the prime contractor in October 2017: *

\$

2. Payment Date: * (mm/yyyy)

3. Were you paid in accordance with the organization's prompt payment policy? *

- Yes - we were paid within 7 days of the prime being paid.
- No - we were not paid within 7 days of the prime being paid.
- N/A - we cannot determine if we were paid promptly.

4. Detail the work you performed for this payment: *

Callouts:

- Enter greater of the actual amount due or \$100. Differences less than \$100 are not flagged as discrepancies by the system.
- Enter Payment Due Date or last day of Audit month

ii) If the higher tier reported a non-zero amount, select either of the below options, then complete the fields that appear.

Confirm Reported Amount?

Correct - the amount reported by Codot Sub 2 as PAID to us is correct (\$6,700.00).

Incorrect - the amount reported by Codot Sub 2 as PAID to us is not correct.

We received the payment in October 2017.

We were paid a different amount in October 2017 than reported (\$6,700.00).

1. Enter the amount you actually received from the prime contractor in October 2017: *

\$

2. Payment Date: * (mm/dd/yyyy)

* If multiple payments were received, enter the date of the first payment.

3. Were you paid in accordance with the organization's prompt payment policy? *

Yes - we were paid within 7 days of the prime being paid.

No - we were not paid within 7 days of the prime being paid.

N/A - we cannot determine if we were paid promptly.

4. Detail the work you performed for this payment: *

Amount must be at least \$100 more or less than the amount reported by higher tier. Differences less than \$100 are not flagged as discrepancies by the system.

Enter Payment Due Date or last day of Audit month

c. Complete required fields (*), then click Save.

d. Select the home button in the top, left corner of the screen to navigate away from the Audit.



Resolving Discrepancies

When a lower tier subcontractor or supplier reports a discrepancy (i.e. disagrees with a payment amount reported by a higher tier contractor) CDOT, the prime contractor, and the subcontractor who reported a discrepancy will be notified of the issue. All parties should login to the system to investigate the discrepancy. No matter who reports the payment or discrepancy, the parties involved in resolving it are the reporting sub, the prime contractor, and the CDOT Project Engineer.

Accessing and Responding to the Discrepancy



1. Login to the B2G System at <http://contracts.codot.gov/>
2. On the home screen, find Audit Discrepancies in your Dashboard and click on the red number.

Contract Audits	Total	< 90 days	> 90 days
Total Audits	9	4	5
Incomplete Audits >	1	1	0
Audit Discrepancies >	1	1	0

3. Click on “# Discrepancy” in the left-most column of the Audit you wish to complete

To **resort** click on column title. To **filter** click on the drop down menu.

Status	Audit Period	
Discrepancy ▾	All ▾	All ▾
1 Discrepancy	December 2017	000010: R1 Test

Note: You may also enter the Audit through an individual contract. If you do, the Audit List will look like the following. To enter the Audit from this screen, select “View Audit” on the far right.

4. In the Audit Actions Section, select “Resolve # discrepancies”



5. In the Subcontractor Payment section, locate the payments that have been rejected and select “Resolve discrepancy.” Note, clicking this link will not automatically resolve the discrepancy.

Confirmed by Sub
Rejected Resolve Discrepancy
Rejected Resolve Discrepancy

- Review any available responses in the Discrepancy Resolution Data Reported Section

Discrepancy Resolution Data Reported	
New Amount Reported by Prime	No response yet.
New Amount Reported by Subcontractor	No response yet.

- At the top of the screen, select “Resolve Discrepancy,” complete the required fields, then click “Save Response.”

Resolve Discrepancy

Audit Notice

Prime Contractors

Prime contractors must be involved in resolving all discrepancies. If the discrepancy is between the prime and its first tier subcontractor or supplier, the prime will need only double check the information that has been provided. If the discrepancy is between lower-level subcontractors, the prime will need to be more involved in fact finding. Because the prime contractor is ultimately responsible for compliance at every level of the project, contractors other than the prime CANNOT resolve the discrepancy on their own behalf.

Subcontractor who reported discrepancy IS a 1st tier subcontractor or supplier

- Follow the steps above to access the discrepancy.
- Verify the payment data you reported. If the subcontractor has already responded to the Discrepancy, review the sub’s response.
- If either the amount entered by you or the amount entered by the other contractor is correct, select the correct option. If neither are correct, select the third option and report the correct amount. Include comments and attach documents in support of your answer. Private comments are only visible to the prime and CDOT. Public comments are available to the other firm as well.

*** required entry**

Select a resolution option, review/update/add other required information, enter comments if needed, and click **Save Response**. You can respond to this discrepancy notice once. Further changes must be processed by the compliance officer.

Discrepancy Resolved? *

YES - the \$70,000.00 originally reported by the prime is correct.
 YES - the \$0.00 originally reported by the subcontractor is correct.
 NO - none of the amounts are correct.

Public Comments

These comments are visible to the compliance officer and the prime contractor.

Private Comments

These comments are visible ONLY to the compliance officer.

Attach File(s)

Attach File

Confirmation

Send me confirmation of my response.

Save Response [Cancel](#)

Remember, the correct amount is the amount paid by you to the contractor during the calendar month of the Audit Period.

- Once both contractors have saved their responses, CDOT staff will be in touch to help resolve any remaining issues.

Subcontractor who reported discrepancy is NOT a 1st tier subcontractor or supplier

1. Follow the steps above to access the discrepancy.
2. Contact the person who reported the initial payment data. The person's contact information should be provided with the responder information, but you can also send an email through the system by clicking on the person's name.

Prime Audit	
Responder	
Name	Erica Downey
Response Date	Local: 1/25/2018 1:58:21 PM CST System: 1/25/2018 1:58:21 PM CST

3. Gather necessary proof to resolve the Audit Discrepancy including how much the Sub-prime paid its lower tier and on what date.
4. Based on the information provided by your subcontractor, complete the required fields to resolve the discrepancy.
5. If either the amount entered by the sub-prime or the amount entered by the lower tier contractor is correct, select the correct option. If neither are correct, select the third option and report the correct amount. Include comments and attach documents in support of your answer. Private comments are only visible to the prime and CDOT. Public comments are available to the other firm as well.

*** required entry**

Select a resolution option, review/update/add other required information, enter comments if needed, and click **Save Response**. You can respond to this discrepancy notice once. Further changes must be processed by the compliance officer.

Discrepancy Resolved? *

YES - the \$70,000.00 originally reported by the prime is correct.
 YES - the \$0.00 originally reported by the subcontractor is correct.
 NO - none of the amounts are correct.

Public Comments

These comments are visible to the compliance officer and the prime contractor.

Private Comments

These comments are visible ONLY to the compliance officer.

Attach File(s)

Confirmation

Send me confirmation of my response.

[Cancel](#)

Remember, the correct amount is the amount paid by your subcontractor to its lower tier contractor during the calendar month of the Audit Period.

6. Once both contractors have saved their responses, CDOT staff will be in touch to help resolve any remaining issues.

Subcontractors or Suppliers who Report Discrepancies

1. Follow the steps above to access the discrepancy.
2. Verify the payment data you reported. If the prime contractor has already responded to the Discrepancy, review the prime's response.
3. If either the amount entered by you or the amount entered by the other contractor is correct, select the correct option. If neither are correct, select the third option and report the correct amount. Include comments and attach documents in support of your answer. Private comments are only visible to you and CDOT. Public comments are available to the prime as well.

*** required entry**

Select a resolution option, review/update/add other required information, enter comments if needed, and click **Save Response**. You can respond to this discrepancy notice once. Further changes must be processed by the compliance officer.

Discrepancy Resolved? *

YES - the \$70,000.00 originally reported by the prime is correct.
 YES - the \$0.00 originally reported by the subcontractor is correct.
 NO - none of the amounts are correct.

Public Comments

These comments are visible to the compliance officer and the prime contractor.

Private Comments

These comments are visible ONLY to the compliance officer.

Attach File(s)

Confirmation

Send me confirmation of my response.

[Cancel](#)

Remember, the correct amount is the amount paid by your higher tier subcontractor to you during the calendar month of the Audit Period.

4. Once both contractors have saved their responses, CDOT staff will be in touch to help resolve any remaining issues.

CDOT Form 1420: DBE Plan Modification

Form Overview

DBE plan modifications are requests to substitute, modify, reduce, waive, or terminate one or more of the commitments listed on the prime contractor's initial utilization plan.

Who is Impacted

Prime Contractors seeking to alter a commitment to use a particular DBE firm.

What is Required

Commitments are formal, binding, contractual obligations to CDOT to use specific DBE firms at specific minimum levels of participation. When you request to modify your commitments, you are asking CDOT's permission to alter your original contractual agreement. CDOT Form 1420 may be submitted when there is good cause to reduce, substitute, or terminate a DBE commitment.

Primes should provide notice to the DBE firm and allow the firm five days to respond, then submit Form 1420 to CDOT for approval. For more information regarding utilization plan modifications, please review the CDOT DBE contract specification.

Regulation/Rule/Specification

CDOT DBE Special Standard Provision, which can be found at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

1) *What is considered termination and reduction?*

Self-performance of work by the prime contractor, performance by another subcontractor, whether or not a DBE, and reduction of the work to be performed, whether by Contractor efficiencies or CDOT elimination are examples of termination and reduction. All terminations and reductions must be approved by CDOT.

2) *What are some examples of Good Cause?*

- DBE failure or refusal to execute contract
- DBE failure to perform consistent with industry standards
- DBE fails to meet bond requirements
- DBE becomes bankrupt, insolvent or exhibits credit unworthiness
- DBE suspension or debarment
- DBE not a responsible contractor
- DBE voluntarily withdraws and provides written notice to CDOT
- DBE misrepresented eligibility to receive DBE credit for work
- DBE owner dies or becomes disabled and unable to complete work



3) *If CDOT eliminates part of the work, is that automatically considered good cause?*

No. Goals are set per project not for specific work types. Commitments are tied to specific firms, not specific work. If CDOT eliminates one area of work from a project, both the goal and commitments are still in place. Any modifications to these commitments, including a waiver, must be approved beforehand by CDOT.



Release of Retainage

Retainage Overview

Retainage is an amount that may be withheld from each progress payment by the payer (CDOT, the prime contractor, or a higher tier subcontractor). That withheld money may be released in full at the end of the project or in part upon request once a subcontractor's work has been deemed satisfactorily complete.

Who is Impacted

Higher tier contractors may withhold retainage from each progress estimate on work performed by lower tier subcontractors. CDOT also retains a portion of the prime contractor's progress payments.

What is Required

The prime contractor is obligated to release retainage to a subcontractor if the work identified in the sub's 205 is "satisfactorily completed," meaning CDOT has approved it as a component of a partial or final acceptance of the entire project. Subs may also request the release of retainage in writing. Withheld money may be released in full at the end of the project or in part upon request once a subcontractor's work has been deemed satisfactorily complete.

Regulation/Rule/Specification

The federal prompt payment requirements can be found at 49 CFR 26, available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=70c02b78d4e514ad2dc705d951fc6377&mc=t%20rue&node=pt49.1.26&rgn=div5>

CDOT's rule is included in Section 109.06 of the contract specification, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

FAQs

- 1) *How can a subcontractor request the release of its retainage?*
A subcontractor can make a request to the prime or higher tier sub in writing. The higher tier contractor must make a determination regarding the sub's work within ten days. If accepted, the contractor must release the retainage to the subcontractor within seven days. If rejected, the contractor must provide the subcontractor with a specific description of the deficiencies in writing. For the full procedure please see Section 109.06 of the CDOT contract specification.
- 2) *What if the prime contractor released the subcontractor's retainage then the work is damaged on the job and needs repaired?*
Once the subcontractor's work has been accepted, any future liability throughout the duration of the project falls to the prime contractor. The subcontractor was contracted to perform a service. By accepting the work, the prime and CDOT are acknowledging that the subcontractor has performed that service satisfactorily.

Project Close-Out

Close-Out Overview

CDOT internal staff evaluate the status of a prime contractor's DBE commitments as related to the contract DBE goal.

Who is Impacted

CDOT Finals Engineers submits the semi-final estimate to the CDOT Region Civil Rights Officer to review the prime contractor's progress toward its DBE commitments and overall contract goal.

What is Required

CDOT Region Civil Rights Officers review the contract progress to assess any disincentives after all work is completed on the project, but prior to the release of the contractor's retainage. Because CDOT forms 1418 and 1419 are no longer required on CDOT projects, the civil rights component of closing the project does not require contractor involvement.

FAQs

1) *What happens if a prime contractor falls short of its DBE goal or its DBE commitments?*

Absent an approved 1420 amending the initial goal or commitment, the prime contractor will be issued a sanction equal to the amount of the shortfall when compared to the prime contractor's DBE commitment or DBE goal. Disincentives may be issued for failing to meet a DBE commitment even if the contractor met its DBE contract goal.

2) *How are sanctions and disincentives collected?*

CDOT will recover any owed sanctions or disincentives by withholding them from the prime contractor's final retainage payment.

Section 5: Labor Compliance

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Labor Compliance

Regional Civil Rights Offices



Federal Regulations

Who is Impacted

All contractors working on CDOT federal-aid projects must comply with federal law.

Regulation/Rule/Specification

Davis-Bacon and Related Acts (DBRA)

<https://www.dol.gov/whd/govcontracts/dbra.htm>

This law requires prevailing wage (minimum), fringe benefits, and pay every seven days for the work being done. DBRA is monitored and enforced by CDOT.

Fair Labor Standards Act (FLSA)

<https://www.dol.gov/whd/regs/compliance/whdfs1.pdf>

FLSA covers overtime and the workweek and is enforced by US DOL. Anyone complaining under the governance of FLSA will be referred to US DOL. Most complaints are about travel time. Any travel time (company truck, travel to project on job is FLSA, not DB) beyond a normal home to work will count towards the 40 hours.

Contract Work Hours and Safety Standards Act (CWHSSA)

<https://www.dol.gov/whd/govcontracts/cwhssa.htm>

CWHSSA deals with overtime which is enforced by CDOT. This law requires all hours over 40 in the work week must be paid at 1.5 times the base rate of pay. It is not limited to project hours but on the worker's total hours in a week. Fringe is paid hour for hour. The consequences of non-compliance can include fines, imprisonment, or both. This act covers watchmen and guards.

Copeland Act

<https://www.dol.gov/whd/govcontracts/copeland.htm>

The Copeland "anti-kickback" act of 1934 regulates the deductions from an employee's paycheck allowed - enforced by CDOT. Deductions by law, taxes, and health benefits are allowed. Other deductions that benefit the employee may be allowed, but no deductions are allowable that reduce the wage below the contract minimum wage (Davis-Bacon wages on federal projects). After the close of the project, there is a three-year retention requirement for all project documents. Damages could be up to \$5000 and five years of jail time.

FAQs

1) *Do all federal regulations apply to all projects?*

No, federal regulations apply to those projects that are paid for with federal dollars.

2) *How is this information monitored?*

Yes. It is monitored on every federal project by both the prime contractor and CDOT personnel. Discrepancies are noted, recorded, and reported to FHWA. State funded projects are monitored for the components that apply to them.

Wage Decisions

Overview

A wage decision is a list of pay rates and fringe benefit amounts for each classification of mechanic and laborer for which the Department of Labor (DOL) has determined to be prevailing in a given area for a particular type of construction.

Who is Impacted

All contractors and subcontractors need to be aware of prevailing wages on a project so that they can bid appropriately and pay correctly.

What is Required

The wage decision (if applicable) is attached at bid advertisement time and should be used throughout the duration of the project. There are two other places that you can find the wage decision: the CDOT website (you must already know what the wage decision number is), and the DOL website.

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications>

Regulation/Rule/Specification

Paying prevailing wage on federally funded projects is something that is required through the Davis-Bacon Related Acts.

<https://www.dol.gov/whd/govcontracts/dbra.htm>

FAQs

- 1) *How many wage decisions are there in the state of Colorado?*
There are nine wage decisions in the state of Colorado, and most of them cover more than one county. They are NOT interchangeable.
- 2) *Which wage decision does a prime contractor use if there are multiple wage decisions associated with a project?*
CDOT has a rule (found at the top of each wage decision) that contractors must use the highest wage out of all of the counties associated with the project for each classification. It does not matter if a contractor is doing more work in a cheaper county. The highest wage prevails.
- 3) *Wage decision contains both collectively bargained rates and non-collectively bargained rates. How does that affect a company if it is not union?*
The status of the contractor is irrelevant, and the prevailing wages apply equally to union and non-union contractors.
- 4) *How long is the wage decision good for?*
The contract wage decision is in effect for the entire duration of the project.

5) *Is it possible for there to be a different wage decision on a project across the street from where I am working?*

Yes. The wage decisions are governed by county. If your project happens to fall on a county line, then it is absolutely possible for the wage decision to be different on a project across the street.

6) *Is it possible for a project to not have a wage decision?*

If a project is not federally funded, then it may not have a wage decision.

7) *What happens if there is an update to the wage decision while the project is out to bid?*

If U.S. DOL updates the wage decision 10 days or more before bid letting, the project advertisement will be revised to include the updated wage decision. A contracting agency is responsible for incorporating the applicable wage rate determination into each federally-assisted contract entered into pursuant to competitive bidding procedures. When notice of a change to a wage determination is published in the Federal Register 10 days or more before the opening of bids, the USDOL requires that the new wage determination be incorporated into the contract by amendment.

8) *Who are the covered workers under wage decisions?*

Covered workers include all classifications listed on the wage decision as well as several classifications that are generally not listed, such as: crane operators, concrete pump operators, laborers, mechanics, flaggers, traffic control supervisors, and specialty work.

9) *Who are the non-covered workers under wage decisions?*

Covered workers include laborers, mechanics, and all classifications in which the work is manual in nature. Other covered workers that are generally not listed on the wage decisions are: crane operators, concrete pump operators, mechanics, traffic control supervisors, and specialty work.

10) *Where is the four-digit payroll code associated with the classification?*

This four-digit code is something that is associated with CDOT -- not the DOL. If you need to find the number, you can locate it on the CDOT wage decision or within LCPtracker. DOL will know nothing about that code.

11) *What happens if a contractor can't find what wage decision to use?*

Ask the prime contractor, the project engineer, the Region Civil Rights Office, or the Davis Bacon Payroll Support Specialist in the CDOT CRBRC.

12) *When paying a percentage as part of the fringe benefit, is the base rate or the total prevailing wage rate used?*

Contractors should use the base rate to multiply by the percentage, and then the fringe is added in.

13) *Does the project wage decision need to be posted?*

The wage decision must be posted in a prominent and accessible place with other posters and notices. The prime contractor is responsible for replacing the wage decision or required posters if they become faded, missing, or destroyed.

14) *What if a person is working in two or more classifications? What amount should be paid?*

If a person is working in two or more classifications, there are two ways to pay the wages. The first way is to track all hours and work. The contractor can pay different rates as long as there is a very good system that outlines exactly the classification(s) that a person is working in and for how long. The second method is to pay at the highest wage for all hours worked.

DOL Form 1444: Request for Authorization of Additional Classification & Rate

Form Overview

This is a form that is used to request an additional classification and rate that is not listed on the wage decision.

Who is Impacted

This form is to be used by contractors who have a classification that is not on the wage decision. It is used to request a wage conformance that tells the contractor what wages to pay.

What is Required

This form is used anytime the wage classification that is going to be used is not on one (or more) wage decisions for the project. This process can take a while, so be sure to submit as soon as possible.

Regulation/Rule/Specification

The rule that requires it is located through the Department of Labor <https://www.gsa.gov/forms-library/request-authorization-additional-classification-and-rate>

FAQs

- 1) *What if the prime contractor does not know which classification to use?*
Check the DOL's Occupational Outlook Handbook to find the occupation that best describes what the person is doing. If nothing seems to fit, please reach out to the project engineer, the Region Civil Rights Office, or the CRBRC Labor and Contract Compliance Specialist. It is important that no one is "forced" into the classification.
- 2) *Where is the four-digit classification code by project?*
There will not be a four-digit classification code from the DOL as this is a CDOT practice. You may want to use the classification code that is located in LCPtracker.
- 3) *How does a contractor know what wage to propose on the form?*
The contractor can propose any amount that "bears a reasonable relationship to the wage rates contained on the wage decision."
- 4) *Can the form 1414 be submitted directly to the DOL?*
No, this form is approved by CDOT and submitted to US DOL, and then the final approval or denial is provided by the US DOL.

Fringe Benefits

Overview

Fringe benefits are a form of payment from the contractor to the employee, and the base rate and fringe amount together make the prevailing wage rate.

Who is Impacted

Fringe benefits impact the majority of employees of most contractors that work on a CDOT job because it affects how wages and/or benefits are paid.

What is Required

Fringe benefits (and or applicable cash benefits) are paid for every hour worked on a DBRA job. The prevailing wage must be paid weekly.

Regulation/Rule/Specification

The rules can be found in 29 CFR 3

<https://www.govinfo.gov/app/details/CFR-2018-title29-vol1/CFR-2018-title29-vol1-sec3-1>

It is also outlined in the DOL DBRA Fact Sheet (#66)

<https://www.dol.gov/whd/regs/compliance/whdfs66.pdf>

FAQs

1) *What are some of the acceptable methods to pay fringe benefits?*

The fringe benefits can be paid in cash, bona fide plans, funds, and/or programs in any combination. Some of the usual benefits are insurance, pension plans, vacation, sick pay, holiday pay, etc. Some examples of payment flexibility are in the US DOL Prevailing Wage Resource Book, Page 16.

Example: A Davis-Bacon wage determination requires: Basic hourly rate \$14.00 Fringe benefit 1.00 Total prevailing rate \$15.00 Here are some examples of how a contractor can comply:

1. \$15.00 in cash wages;
2. \$14.00 plus \$1.00 in pension contributions or other “bona fide” fringe benefits;

or

3. \$12.00 plus \$3.00 in pension contributions or any combination of “bona fide” fringe benefits.

(In this case, to compute the minimum overtime rate under CWHSSA, half the basic rate listed, i.e., \$7.00 must be added to the full \$15.00 straight time DBA prevailing wage. Thus, the CWHSSA overtime pay rate would be \$22.00 per hour.)

If paying adjusted rates as described above, the overtime calculation defaults to



the original Davis-Bacon wage requirement except when the actual paid base rate is higher than the Davis-Bacon wage. In example one above, the 1.5 overtime calculation requirement would be paid at $1.5 \times \$15.00$.

2) *For overtime, are fringe benefits paid out at one and a half times the base, too?*

No. For overtime hours, fringe benefits are paid (at a minimum)) at the amount listed on the wage decision.

3) *Can a contractor pay more than the outlined fringe benefits?*

Yes, the prevailing wage requirements outline a minimum amount to be paid. Contractors can always exceed that amount. However, if a contractor does away with the fringe benefits and pays at a higher base rate, this higher amount becomes the new base, and overtime is figured at 1.5 times this rate.

4) *Can the fringe benefits be used for anything that the employer wants?*

No, the fringe portion either needs to be paid in cash or in a bona fide plan, fund, or program. If the contractor wants to use a different method to pay fringe benefits, then that proposed plan must be approved by the Secretary of Labor.

5) *What is the annualization requirement?*

The annualization requirement is an obligation for the contractor to make the same fringe benefit contribution on all hours worked, including time spent on both public and private projects. This is expressed in a dollar amount per hour.

Yearly contributions are divided by 2080 hours. Monthly contributions are multiplied by 12, and then they're divided by 2080. Weekly contributions are multiplied by 52, and then they're divided by 2080.

6) *Do the employees get a say in how the benefits are paid?*

No, the employees do not get a say in what benefits are paid as long as they are legitimate fringe benefits or cash.

Contractor Fringe Benefit & Deduction Statement (CFBDS)

Overview

The CFBS is a form that must be submitted in LCPtracker. Per the 29 CFR, parts 3 and 5, contractors are required to list their deductions. The CFBS is how CDOT chooses to have contractors itemize those deductions.

Who is Impacted

Per specification, a CFBDS is required from every contractor at least once per year, per project, or whenever new information becomes pertinent.

What is Required

The CFBS must be uploaded to LCPtracker before the payroll can be certified. This form does not have to be linked to a specific person, but it can be linked through ANYperson, and it will show up for all employees of the contractor.

The CFBS is located in the eDocuments in LCPtracker. You can download it and write on it or type on it, and then you can re upload the document straight into LCPtracker.

Regulation/Rule/Specification

CDOT Payroll Standard Special Payroll Provision Specification, available at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2011-Specs/standard-special-provisions/SSP-Index.docx/view>

Certified Payroll Deductions

Overview

Deductions are amounts that are withheld from an employee's check, and these amounts are withheld by the employer.

Who is Impacted

Deductions affect all contractors and their employees because the laws surrounding deductions dictate what can be legally taken from an employee's pay.

What is Required

Deductions can occur a single time, weekly, monthly, or quarterly. For CDOT's certified payrolls, any deductions other than payroll taxes will be noted in the "Other Deduction Notes" area outlined in LCPtracker. Documentation of these deductions must be uploaded into the eDocuments of LCPtracker.

Regulation/Rule/Specification

The rules can be found in the 29 CFR 3. DOL outlines that deductions must benefit the employee.

<https://www.gpo.gov/fdsys/pkg/CFR-2013-title29-vol1/xml/CFR-2013-title29-vol1-part3.xml>

FAQs

- 1) *What are allowable deductions under the federal laws?*
The deductions through certified payroll must be identified and legally allowable as referenced through the 29 CFR 3-5. Some examples are taxes, additional employee or family insurance, and union dues. Court garnishments require additional documentation through LCPtracker in the eDocuments. Cash advances on wages (whether listed as a cash advance or personal loan) will require additional documentation outlining terms for repayment. For all paycheck loans, the following information will be required: beginning date, end date, total amount to be deducted, amount deducted per paycheck.
- 2) *Can employers take out the cost for Personal Protective Equipment (PPE)/Tools?*
No, tools and PPE are considered the "cost of doing business" and are not allowable deductions. While such deductions may be allowable under the FLSA or other federal guidance, it may not be allowable under DBRA.
- 3) *Can a company charge a fee to cash an employee's check?*
No, the company cannot benefit from paying employees. Charging a fee is likely a violation of the Copeland Act.
- 4) *How are deductions outside of those in the 29 CFR accounted for?*
Any deduction outside of those in the 29 CFR, as well as any garnishments, must be broken out into two components within the "Other Deduction" part of LCPtracker: 1) What the deduction is 2) The cost for that deduction.

Overtime

Overview

Overtime requires a premium pay of at least one and one-half times the regular rate for hours worked in excess of 40 hours per work week.

Who is Impacted

Overtime pay affects employers in the amount that is paid and employees in the amount that they earn.

What is Required

Overtime must be paid for all hours over 40, and this is NOT limited to only DBRA hours.

Regulation/Rule/Specification

Overtime is governed by the Contract Work Hours and Safety Standard Act (CWHSSA) <https://www.dol.gov/whd/regs/statutes/safe01.pdf>

And the Fair Labor Standards Act (FLSA) <https://www.dol.gov/whd/flsa/>

More specific guidance is found in the Overtime Pay on DBA / DBRA Contracts in the DOL Prevailing Wage Resource Book, available at <https://www.dol.gov/whd/govcontracts/pwrb/toc.htm>

FAQs

1) *Does all overtime need to be paid at a higher rate?*

Yes, all overtime must be paid at 1.5 times the (established) base wage and then the fringe should be added in for each hour.

2) *Can overtime wages be deducted from fringe benefits?*

Overtime wages cannot be deducted from fringe benefits. For more information, please check 29 CFR 5 (B).

3) *If the work that was done did not fall into the overtime rate (i.e. it was done at the beginning of the week), does the contractor still pay overtime?*

Yes, all hours over 40 per work week must be paid at the time and a half rate, at a minimum

4) *If the contractor pays its employees over the Davis-Bacon rate, can the contractor then default to the Davis-Bacon rate for overtime?*

No, by paying overtime at a higher rate a new de facto rate has been established. That higher rate is the one that must be paid at time and a half.

Site of Work

Overview & Definition

“Site of work” is defined as the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed provided that such site is established specifically for the performance of the contract or project. Other work areas not located on the site of permanent construction (job headquarters, tool yards, batch plants, borrow pits) may be a part of the site of work “provided that they are dedicated exclusively or nearly so, to the performance of the contract or project, and provided they are adjacent, or virtually adjacent to the site of the work.” CDOT also uses the following definition for the Site of Work: Right of way to right of way, mile marker to mile marker.

Who is Impacted

Contractors need to know what constitutes actual site of work so they can pay appropriately. Workers on the site of work are covered by Davis-Bacon and must be paid the proper wage and appear on certified payrolls. Employees need to know what is considered site of work so that they can monitor how much to be paid.

What is Required

The employers need to know as soon as possible what is actually considered the site of work so that they can pay correct wages.

Regulation/Rule/Specification

Davis-Bacon Questions and Answers, available at

<https://www.dol.gov/whd/govcontracts/DB-QAs.pdf>

29 CFR 5.2, available at

<https://www.govinfo.gov/app/details/CFR-2018-title29-vol1/CFR-2018-title29-vol1-sec5-2>

FAQs

- 1) *How a contractor determines if the location is considered “Site of Work”?*
In order to determine “Site of Work,” there is a two-prong test: 1) is the location dedicated exclusively or nearly so to the performance of the contract AND 2) is the location adjacent or nearly adjacent to site of work?
- 2) *Is the right-of-way considered to be part of the site of work?*
Yes, the site of work area on your plans (right-of-way) is included.
- 3) *Are plants and yard pits ever considered as part of the site of work?*
Batch plants and yard pits could be considered the site of work if the site comes down when the project is complete and those sites are dedicated exclusively to the project. However, if the mobile plants are set up inside a commercial plant and the commercial plant will stay there even after the end of the project, then the mobile plant is NOT considered site of work.
- 4) *Is there a standard mileage where a location can be considered site of work?*
DOL does not specify mileage, but they have mentioned in the past that 30 miles is too far. These cases are considered on a case by case basis.

Trucking: Drivers

Who is Impacted

This information is pertinent to the truck drivers as well as the prime contractors who need to make sure that all compliance laws are followed.

Regulation/Rule/Specification

Laws concerning truck drivers can be found in 15e22 of the Field Operation Handbook, https://www.dol.gov/whd/FOH/FOH_Ch15.pdf

FAQs

1) *Do all truck drivers need to have a 205?*

Yes, all truckers need to have a 205 on all projects. The time spent on the site of work is a key determining factor regarding when a Form 1425 can be used. If you are unsure about the amount of time that the trucker will be on the project, or if there will be tiered work under said trucker, please us a Form 205. The 205 ensures that either a service agreement or a subcontract is active and that the provisions of the 1273 are in place and binding.

2) *Do truckers need to submit certified payroll?*

It depends. Here are some guidelines:

- a) Is the trucker functioning in a de minimis capacity? De minimis is defined as 20% or less of the work week. If yes, the trucker's hours are considered de minimis, then certified payroll is not needed. If the trucker's time on the site of work each week is greater than 20% then certified payroll is needed. If a trucker's time varies -- sometimes it is de minimis and sometimes it is not de minimis-- then all weeks that are greater than de minimis should have payroll, and all of the other weeks should show a payroll report (a no-work week) with zero hours and zero dollars with the notation "De Minimis Work This Week." They need to have a 205 in place, and they must submit their own payroll.
- b) Is the trucker working on the site of work?
If the answer is yes, meaning that the trucker is on the site of work more than 20 % of the work week, then the trucker needs to have certified payroll. If the answer is no meaning that the trucker is not working on the site of work at least 20% of the time, then the trucker does not need payroll. If this situation varies for the trucker, then the trucker will be required to complete certified payroll.

3) *When are truck drivers covered by Davis-Bacon laws?*

Truck drivers are covered in the following instances:

- a) Time spent working on the site of work
- b) Loading and / or unloading of material or supplies, if not de minimis
- c) Delivery of material or supplies between a facility that is part of the site of work and the actual construction site
- d) Transport of portion(s) of the building or work between a site of work and the physical place(s) where the building or work called for in the contract will remain.

4) *When are truck drivers NOT covered by Davis-Bacon laws?*

Truck drivers are not covered in the following instances:

- a) Material delivery truck drivers while off “the site of work.”
- b) Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of work”.
- c) Truck drivers whose time spent on the site of the work is *de minimis* such as only a few minutes at a time merely to pick up or drop off materials or supplies.

5) *How are certified payrolls handled for “1099 drivers?”*

“1099 drivers” are considered subcontractors. If those truck drivers are being subbed out to do a portion of the work, they are subcontractors and will need a 205.

Trucking: Material Suppliers

Who is Impacted

This information applies to those whose time is spent on the site of the work loading or unloading materials and supplies.

Regulation/Rule/Specification

The laws surrounding the DBRA coverage of trucks can be found in the DOL Wage and Hour Division Field Operation Handbook

https://www.dol.gov/whd/FOH/FOH_Ch15.pdf

and in the Prevailing Wage Resource Book

<https://www.dol.gov/whd/recovery/pwrb/Tab9.pdf>.

FAQs

1) *Are material suppliers covered by Davis Bacon laws?*

Yes, they can be—both the material suppliers and their employees. It depends on the amount of time that a trucker spends on the site of work. This time must be tracker.

The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete, when accomplished by bona fide material suppliers, are activities not covered by DBA/DBRA requirements. (This would be so even though the materials are delivered directly into a contractor's mixing facilities at the work site.)

If the time spent on the site of work is de minimis, then no certified payrolls are required. Bona-fide material suppliers whose only contractual obligations for on-site work are to deliver materials and /or pick up materials, where such time is de minimis, are not considered contractors under the DBA/ DBRA and therefore would not have to report payroll.

However, if a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a subcontractor, its laborers and mechanics employed at the site of the work would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor.

2) *Is CDOT Form 205 required for material suppliers?*

Typical material suppliers do not need a 205; they will need to be listed on CDOT Form 1425. Material suppliers do not need to complete certified payrolls. If a contractor is unsure about whether or not it fits into this owner/operator material supplier category, please check with the Region Civil Rights Staff.

Trucking: Owner/Operators

Who is Impacted

This information applies to truck owners who own AND drive their own truck. The US DOL's enforcement position is that the owner/operator status applies only when the owners own AND drive their own truck. This owner/operator position does not apply to any other employee working for the owner. Nor does it apply to any other equipment owner/operator.

Regulation/Rule/Specification

The laws surrounding the DBRA coverage of trucks can be found in the Prevailing Wage Resource Book and the Field Operation Handbook:

<https://www.dol.gov/whd/govcontracts/pwrb/toc.htm>

DOL Wage and Hour Division Field Operation Handbook

https://www.dol.gov/whd/FOH/FOH_Ch15.pdf

FAQs

1) *Are certified payrolls required for owner/operators of trucks?*

For those that are de minimis, certified payrolls are not required. For those truckers that are on the project more than de minimis (more than 20% of the work week), certified payrolls must be completed. The certified payrolls should include the names of the owner/operator, and they will need to click a button that says “owner/ operator” within LCPtracker. They will not need to show the hours worked or the rate paid. Registration and driver's license must be uploaded into eDocuments within LCPtracker. For those owner/operators that are sometimes de minimis and sometimes not, owner/operators should plan to fill out payrolls each week, with a “working de minimis time” notation for each week that it is applicable. Truckers who are independent owner/operators cannot be listed on the prime contractor's certified payroll. This is a contradiction. Either the truckers and owner/operators, or they are employees. They are not both. A trucker owner affidavit will also have to be uploaded for each owner/operator before certification.

2) *How are certified payrolls submitted when the owner / operator of other businesses has employees?*

If the company has other employees, then the company would need to submit their own certified payroll. On that payroll, the owner would report themselves as Owner- Operator (with no hours or rates) and all other employees driving trucks would be reported as employees (Truck Drivers) with hours and rates reported to satisfy Davis Bacon.

3) *Do truck owner/operators need to have a Form 205?*

Yes, even if the trucker is de minimis, they should have a Form 205 in place.

4) *Do owner/operator material suppliers need to complete certified payrolls and 205s?*

Typical material suppliers do not need a 205; they will need to be listed on CDOT Form 1425. Material suppliers do not need to complete certified payrolls. If a contractor is unsure about whether or not it fits into this owner/operator material supplier category, please check with the Region Civil Rights Staff.

5) *How does this rule apply to other owner/operators?*

Generally speaking, it does not. DOL outlines that this position of enforcement does not apply to owner/ operators of other equipment such as bulldozers, backhoes, cranes, etc. Owner/ operators of equipment (other than trucks) should plan to complete certified payroll.

Owner-Operator (Not Trucks): Executive Exemption

Who is Impacted

This information applies to business owners who own at least 20% of their business. The US DOL's enforcement position is that for executives who own their own business, direct the management of their business, and perform the work, certified payrolls are not required in a traditional sense. However, a modified payroll will still be required.

Regulation/Rule/Specification

The laws surrounding the executive exemption are governed by the Fair Labor Standards Act (FLSA), Section 13 (a)(1) as described in the Federal Register, Vol. 84, No. 188. Available at <https://www.govinfo.gov/app/details/FR-2019-09-27>

It is also governed by the 29 CFR, Subtitle B, Chapter V, Subchapter A, Part 541 <https://www.ecfr.gov/cgi-bin/text-idx?SID=62e63b2a9c9a27781cf6af25feb88d8b&mc=true&node=pt29.3.541&rgn=div5>

FAQs

- 1) *Do owner/operator truck drivers fit under this same requirement?*
Owner/operator truck drivers may be exempt under this law because they own a business (truck), owner/operators have their own special exemption from DOL that exempts them from documenting hours worked or rated paid (on most projects). This law for executive exemption focuses on companies other than trucks.
- 2) *If I qualify for an executive exemption, do my employees also qualify?*
No, your employees will need to be listed and reported within LCPtracker.
- 3) *What is needed in LCPtracker?*
You will need to upload documents that demonstrate that you own at least 20% of your company. You will also need to fill out an owner-operator affidavit.

Contractor's Payroll Records

Overview

A contractor's payroll records are those that contain the information that is required by law as listed below.

Who is Impacted

For federal projects, all active construction contractors must list their employees working on the job, and they must include specific information outlined in the law's requirements. Be aware that different requirements exist for FLSA and DBRA.

What is Required

A contractor's payroll records (with all information) is required weekly. Records must include:

- Full name
- Address
- Social security number
- Correct classification(s)
- Hourly rate of pay, including fringe benefits
- Daily hours
- Weekly hours
- Deductions
- (Total) actual wages paid

Some of the additional payroll requirements for FLSA are as follows: birth date if younger than 19, sex and occupation, time and day of when the employee's work week begins, regular rate(s) of pay, all additions or deductions from employee wages, and the pay period that is covered.

Please remember that the full social security number is needed for the employer files, but that only the last four digits are shown within LCPtracker. The biggest difference between CDOT processes from the last few years to now is the electronic system for payrolls. LCPtracker is the system that CDOT uses for all certified payrolls for federal jobs.

Regulation/Rule/Specification

DBRA requirements

<https://webapps.dol.gov/elaws/elg/dbra.htm>

FLSA requirements: 29 C.F.R. § 5.5(a)(3)(ii)(D)

<https://www.dol.gov/whd/regs/compliance/hrg.htm>

FAQs

- 1) *What is the Contractor Fringe Benefit & Deduction Statement (CFBDS)?*
The CFBDS is a form that is a requirement within LCPTracker and the payroll specification. Per the 29 CFR, parts 3 and 5, contractors are required to list their deductions. The CFBS is how CDOT chooses to have contractors itemize those deductions. It is located within the eDocuments of LCPTracker and is required once per project or when new information becomes pertinent.
- 2) *What happens if the subcontractor payday is different from the prime contractor's?*
It is fine. The actual payday is unique to each contractor. As long as a regular pay date is established and employees are paid weekly, there is no problem.
- 3) *Do owner/operators have to do payroll?*
Owners and salaried employees working within a laborer and/or mechanic classification must be on the payroll. Owner operators (NOT OF TRUCKS) who are working on site must also be on the payroll. Generally speaking, when owner operators are working on site, both hours worked and amount earned must be entered. However, there are some exemptions. For example, a person who owns at least a bona fide 20% equity in the business AND is actively engaged in its management may be considered an executive and therefore exempt from certified payroll, but there are other caveats. For more specific information about how this applied to owner/operators of trucks, please see the section on Owner/Operator of Trucks. For other owner/operator questions, please read the section titled "Executive Exemption" or contact the CRBRC Davis-Bacon Payroll Specialist.
- 4) *How does a contractor sign the former CDOT Form 118?*
The CDOT Form 118 was a statement of compliance in the paper payroll system. It is now signed electronically by whomever is submitting payroll. It is required each time the contractor certifies payroll.

The requirement to fill out the statement of compliance comes from the WH347. It outlines that the statement of compliance should be filled out like this:

4A - Fringe (only)

4B - Cash in lieu of Fringe

4C - Justification for paying less than the required amount in the wage decision.

Remember: The question here is asking *how* the contractor is meeting the D-8 requirement of fringe payments, not about the employer or how the employer is paying. CDOT is looking for how the wage decision is being followed.

5) *Can a contractor pay its employees twice a month?*

It doesn't matter if the employees agree to a different paycheck schedule. The requirement to pay employees weekly is federal law and is non-negotiable.

6) *Do professional service firms need to submit certified payroll?*

It depends. There are often certified payroll for these types of companies / contracts. Although the contractor may be listed as a "professional service" because of how they are paid -- in a lump sum for work completed - if they are performing laborer / mechanic work, Davis-Bacon laws would be required.

In this case, it very often requires that a 1444 be completed since it is not on the wage decision. D-B laws require that "The term 'laborer or mechanic' includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial duties." The Prevailing Wage Resource Book outlines that "the payment of the applicable prevailing wage rates to all laborers and mechanics "regardless of any contractual relationship which may be alleged to exist."

7) *What if there was a mistake on the payroll?*

CDOT's policy for reporting back wages is to enter a revised payroll and "correct" the weekly payroll information submitted for a pay period to include original pay information + back wages pay information (from restitution checks issued, broken down into the info for each applicable weekly pay period).

By entering both the original pay detail + the restitution details for work performed on site for each applicable weekly pay period (broken down for that week) = the contractor is providing the "actual wages paid" for the weekly pay period as required to be reported. A contractor is not to list a lump sum payment on a week's pay period, or multiple pay periods - unless it is only for that one week's work on site. When it is for several pay periods, that lump sum will need to be broken down for each applicable pay period, and entered accordingly as additional pay in addition to the original pay, and the totals of the multiple payments shown as reported actual wages. All other required info must also be corrected such as classification, hours, etc. as needed.

8) *How do I report restitution?*

See the question above.

Contractor's Payroll Checking Requirements

Overview

All prime contractors are required to check all subcontractor payrolls.

Who is Impacted

All prime contractors

What is Required

Each week, the prime contractors are responsible for checking all certified payrolls on a project. This is done by the prime approvers (designated in LCPtracker) approving their own and all subcontractors' payrolls.

Regulation/Rule/Specification

CDOT Special Standard Provision for Required Contract Provisions Federal-aid Construction Contracts, available at

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications/rev-ssp/rev-misc/rcp-october-20-2016.docx/view>

FAQs

1) *What if a payroll is incorrect? What is the process?*

The prime contractor should reject the payroll in LCPtracker and send an admin notice with the rejection asking for whatever is needed. Within LCPtracker, there are different processes depending on whether the payroll has already been certified. Please check the training materials that are offered through LCPtracker to guide you through this process.

2) *Can a prime contractor send an email to let a subcontractor know to fix a payroll?*

Yes, but it is easier to do it within the electronic payroll system (LCPtracker) so that the prime, the project engineer, and the subcontractor are all aware of what the concern is with the payroll. Everyone will have the same knowledge. Besides, at that point, there is now a tracking of the messages that have been sent in case it becomes a long term problem.

3) *What if the subcontractor doesn't fix the problematic payroll?*

At every stage, the CDOT Project Engineer should be involved, so please contact the Project Engineer with any concerns.

CDOT Form 280: Labor Interviews

Who is Impacted

CDOT personnel or assignee is responsible for conducting employee interviews on every federal, state, local agency, and maintenance project even if it is exempt from labor standards.

What is Required

The interviews are required from the first month of active construction on the project.

Regulation/Rule/Specification

This requirement is found in 29 CFR, 5.5, 3D (iii)

https://www.codot.gov/business/designsupport/bulletins_manuals/construction-bulletins/superseded-cb/cb-form-2013-2/view

FAQs

1) *Can subcontractors be interviewed?*

Yes, any contractor's employees that are working on the job can be interviewed.

2) *What happens if all employees have already been interviewed?*

If all employees have already been interviewed, the CDOT person or assignee needs to note that information, and the same people do not need to be re-interviewed over and over again. Once quarterly is sufficient.

3) *How is the number of interviews determined for the project?*

The number of interviews required for each project is determined by the cost of the project.

- Up to \$20 million
--4 interviews during each month of active construction
- Greater than \$20 million and up to \$100 million
--8 interviews during each month of active construction
- Greater than \$100 million and up to \$200 million
--12 interviews during each month of active construction
- Greater than \$200 million and up to \$300 million
--16 interviews during each month of active construction

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Appendix A: DBE Goal Setting Process

Colorado Department of Transportation (CDOT) is a recipient of U.S. Department of Transportation (USDOT) Federal Highway Administration (FHWA) funds. As such, pursuant to 49 CFR Part 26, Subparts B and C, CDOT must maintain a Disadvantaged Business Enterprise (DBE) program and set an overall goal for DBE participation.

CDOT's DBE Goals

CDOT considers DBE goals in two broad terms:

- 1) What is the overall CDOT DBE goal?
- 2) What are the project or contract goals that contribute to the overall goal?

To look at this more deeply, CDOT must look at all DBE contracting opportunities.

a) Contracting Opportunities

For the overall goal, CDOT first determines the potential contracting opportunities through construction contracts, professional services contracts, and design build contracts. One way to do that is by analyzing opportunities presented over the past three years in construction and professional services (i.e. engineering, architecture, survey, etc.) For construction contracts, the past opportunity information was collected in the form of bid items during the award process. For professional services, the information is collected in the form of task orders against awarded contracts.

For project goals, CDOT analyzes all available DBE opportunities within each individual contract.

b) Identification of Ready, Willing, and Able DBEs

Once all of the opportunities in each contract are identified, the next step of the process is to determine which of these opportunities could be filled by an active DBE, certified to perform work in a specific area. CDOT analyzes the UCP Directory, the only DBE directory in the state of Colorado which includes Colorado-based firms, as well as out-of-state firms that are certified as a DBE in Colorado. Using the knowledge of currently certified DBEs, CDOT will then see what certified DBEs are available now and if they are willing to consider doing the work that is associated with their certification as well as have the capacity to do the work - are they able? CDOT uses all of the accumulated information to identify amounts (both dollar value and percentages) that are compared to the project value. A portion of the total possibility will be used as the DBE goal.



Appendix B: CDOT Form 205: Sublet Permit Application Instructions

The Form 205 is an Excel spreadsheet with the calculations hard coded in the spreadsheet. After opening the document, be sure to click on the “Enable editing” and “Enable Content” box on the top of the spreadsheet. Due to different versions of Microsoft Excel, make sure to download and save the file to your computer and re-open it.

There are three Form 205 templates included in the excel document. They include a template for:

- 1) The first subcontractor;
- 2) All other subcontractors; and
- 3) All lower tier subcontractors.

Each tab may be named in any convention that you, the Contractor, chooses. To rename a tab, double click to highlight the tab with a black highlight. Type the name/ label and hit enter.

Adding Subcontractor Sheets

Prior to completing the first Form 205, add the number of subcontractor sheets you anticipate for your project.

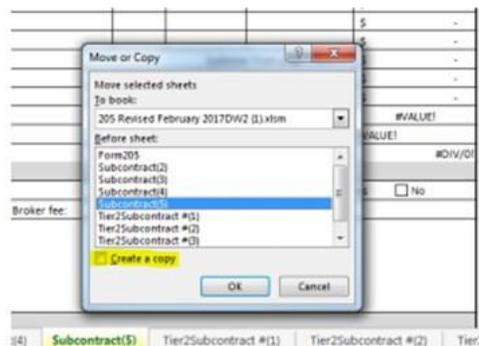
1. Go to the last Subcontract Sheet tab called “subcontract(5)”

Total amount of this sublet:	\$	-
Previous amount sublet under the Contract:	#VALUE!	
Total amount of contract sublet:	#VALUE!	
Percent of contract sublet:	#DIV/0!	
<input type="checkbox"/> ESB		
Substitute DBE (Y/N):		<input type="checkbox"/> Yes <input type="checkbox"/> No
Contractor: <input type="checkbox"/> Dealer <input type="checkbox"/> Broker	Broker fee:	If Y, to what DBE:

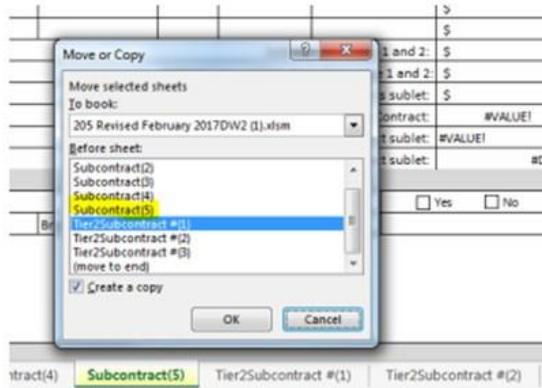
Test to the following:

Subcontract(3)	Subcontract(4)	Subcontract(5)	Tier2Subcontract #1)	Tier2Subcontract #2)	Tier2Subcontract #3)
----------------	----------------	----------------	----------------------	----------------------	----------------------

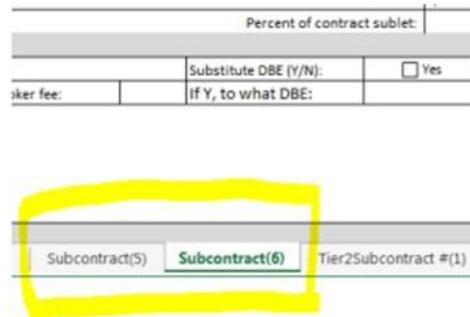
2. Right click on the tab and select “Move or Copy “. A dialog box will pop up and you will want to click the “Create a copy” box.



3. Move down the list to the very last subcontract (5) and go one more past the subcontract(5) to create the new sheet.



4. Click OK and the new sheet should appear to your last sheet. If you right click on tab you can rename the sheet if you would like.



Completing the Form Header Information

The header requests Contractor and project information.

COLORADO DEPARTMENT OF TRANSPORTATION		Prime Contractor Name:
SUBLET PERMIT APPLICATION		Contact Name:
Total Original Contract Amount:		Contact Phone #:
Total % Sublet (in hundredths):	#DIV/0!	Contact Email:

- The Project Code is the CDOT subaccount number (ex: C12345).
- The federal number is the hyphenated alpha numeric code provided in the announcement (ex: NHPP-0001-003)
- In Total Original Contract Amount enter the original bid amount. Do not include force account (F/A) items.
- The Total Percent Sublet (in hundredths) will automatically calculate when the work item detail lines are completed.

Subcontractor Information

Item No.	Description	Quantity	Units
	Major Items		
202-00240	Removal of Asphalt Mat (Planing)	4,849.000	SY
202-00246	Removal of Asphalt Mat (Planing) (Special)	8,320.000	SY
202-00453	Removal of Portions of Present Structure (Class 2)	1,904.000	SY

- In Location, for Design Build projects, list location for the item within the project.
- Exempt Items are those that do not count against the contractor's 30% self- performance. They include specialty items, leased employees and suppliers (if using this form for additional DBE participation).
- In Quantity provided the number of units being provided.
- In unit price, enter the price shown in your contract between you and the subcontractor.

Subtotals and Percentages

This section will calculate all necessary information. The line for "Previous amount sublet under the contract" will be zero for the first subcontract. All following subcontracts will auto populate based on the total from the previous subcontracts.

Subtotal from page 1 and 2:	\$	-
Subtotal less exempt items from page 1 and 2:	\$	-
Total amount of this sublet:	\$	-
Previous amount sublet under the Contract:	\$	-
Total amount of contract sublet:	\$	-
Percent of contract sublet:		#DIV/0!

DBE/ESB Participation Verification

Complete this section when subletting to a DBE or ESB for credit towards a goal or incentive:

- Indicate whether you are seeking credit for the firm as a DBE, ESB or both. DBE firms are listed on the DBE directory at www.coloradodbe.org. ESB firms are listed on the ESB directory at www.coloradoesb.org.
- If the DBE or ESB is a supplier check the appropriate box indicating how you believe they are performing on the project: as a manufacture, dealer, or broker. If they are a broker indicate what the percentage is for the broker fee. For all suppliers, include a copy of the DBE or ESB quote with the 205.
- In the space provided refer to the DBE directory and provide the 6 digit NAICS code and NAICS Index descriptor for the work to be performed.



Work Codes	
NAICS	NAICS Index
CO UCP NAICS 237310	Painting lines on highways, streets and bridges
CO UCP NAICS 237310	Sign erection, highway, roads street or bridge

If this subcontractor is a substitute DBE, identify the original DBE being substituted. All substitutions must follow the procedures outlined in the DBE Standard Special Provision.

Signatures

The Contractor and subcontractor(s) shall sign in the appropriate areas. If this is a tier subcontract the Contractor shall sign along with the both the tier 1 subcontractor, tier 2 subcontractor, and tier 3 subcontractor.

Contractor Signature: _____	Name: _____	Date: _____
Tier #1 Subcontractor Signature: _____	Name: _____	Date: _____
Tier #2 Subcontractor Signature: _____	Name: _____	Date: _____
Tier #3 Subcontractor Signature: _____	Name: _____	Date: _____

Subcontract Approval

Work may begin once the Engineer has signed and returned the Form 205 to the Contractor. Following the Engineer's approval the form is sent to the RCRO. Upon review of the Form 205, the RCRO may notify the Engineer of issues with the sublet. Additionally, the RCRO may identify that the DBE or ESB may not be eligible to count for all items listed. This will be noted in the section at the bottom of the Form 205.

Subcontract Approval - The application is approved subject to the terms of the Prime Contractor's Contract with CDOT. Nothing in this application shall create a contractual relationship between CDOT and the subcontractor. CDOT approval of this application is not an endorsement of the subcontractor and does not relieve the Prime Contractor of any responsibilities under the Contract with CDOT.		
Project Engineer Signature: _____	Name: _____	Date: _____
Region Civil Rights Office: _____	Name: _____	Date: _____
RCRO Notes:		

NOTE: All signatures emailed, scanned or faxed are to be considered originals and are binding on the parties.

Tier 2 (and below) subcontract completion instructions

On occasion a Tier 1 subcontractor will subcontract some of their work items to another subcontractor. This is considered a Tier 2 subcontract. For Tier 2 firms and below, a Form 205 shall be completed and signed by the Contractor and the higher tier subcontractors.

There is a separate spreadsheet contained within the Form 205 workbook. This spreadsheet does not count toward the total sublet as the amounts are included with the Tier 1 subcontract.



If this is a Tier 2 subcontract, complete the Form 205 labeled Tier 2 subcontractor (last tab of the workbook). The CDOT Form 205 is completed in the same manner as the tier 1 Form 205. However, there are some differences:

- The Tier 2 section and the associated Tier 1 information shall be completed;
- The totals for percent of sublet and sublets dollars are blacked out (since the dollars were already considered in the Tier 1 Form 205).

Subtotal from page 1 and 2:	\$	-
Subtotal less exempt items from page 1 and 2:	\$	-
Total amount of this sublet:		
Previous amount sublet under the Contract:		
Total amount of contract sublet:		
Percent of contract sublet:		

Printing instructions

There are multiple ways for printing the Form 205:

- Select Print and only print the current (active) form.
- Select to print the entire workbook.
- Select multiple tabs, and then print the active forms.

For any questions or assistance, please call the Civil Rights and Business Resource Center at 303-757-9234 or dot_compliance@state.co.us.



Appendix C: EEO Policy Samples

Sample 1

XYZ Company is committed to providing equal employment opportunities to you and all other persons without regard to race, creed, color, religion, national origin, sex, marital status, citizenship status, age, veteran status, or disability. The Company will provide reasonable accommodation to otherwise qualified individuals with a disability with the law. Depending on the circumstances, what constitutes a reasonable accommodation will be addressed by the Company on a case-by-case basis.

Furthermore, we will not tolerate any form of discrimination or harassment of our employees by co-workers, supervisors, customers, or vendors. This commitment extends to our policies on recruiting, advertising, hiring, placement, promotion, training, transfer, wages, benefits, termination and all other privileges, terms and conditions of employment.

- The XYZ Company is an equal opportunity employer. No person is unlawfully excluded from consideration for employment because of race, color, religious creed, national origin, ancestry, sex, age, veteran status, marital status or physical challenges or any other characteristic protected by law.
- The policy applies to not only recruitment and hiring practices, but also includes affirmative action in the area of placement, promotion, transfer, rate of pay and termination.
- Executive, management, and supervisory levels have the responsibility to further the implementation of this policy and ensure conformance by subordinates.
- Any XYZ Company employee who engages in discrimination will be subject to suspension or termination.
- Any supervisory or managerial employee who knows of such behavior and fails to take immediate and appropriate corrective action will also be subject to disciplinary action.
- Retaliation against claimants will not be tolerated.

Affirmative action will be taken to ensure that all employment decisions, including but not limited to those involving recruitment, hiring, promotion, training, compensation, benefits, transfer, discipline, and discharge are free from unlawful discrimination.

(The company should provide the EEO officer's name, telephone number, company address. The President of the company should also be listed, his/her signature and date the document was signed).

APPROVED BY: EFFECTIVE DATE: LAST REVISION:



Sample 2

Best Ever Construction Company shall provide Equal Employment Opportunity to all employees and applicants for employment in accordance with all applicable Equal Employment/Affirmative Action laws, directives, and regulations of Federal, State, and Local governing bodies.

Best Ever Construction Company will not discriminate against or harass any employee or applicant for employment based on race, color, creed, religion, national origin, sex, disability, age, marital status, or status with regard to public assistance.

Best Ever Construction Company will take affirmative action to ensure that all practices are free of such discrimination. Such employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, selection, layoff, disciplinary actions, termination, rates of pay or other forms of compensation, and selection for training.

Best Ever Construction Company will commit the necessary time and resources, both financial and human to achieve the goals of equal employment opportunity and affirmative action.

Best Ever Construction Company will evaluate the performance of its management and supervisory personnel based on their involvement in achieving these affirmative action objectives as well as other established criteria. Any employee of this organization or subcontractor to this organization who does not comply with the equal opportunity policies and procedures as set forth in this statement will be subject to disciplinary action.

Best Ever Construction Company has appointed John Hancock, Director of Human Resources, to manage the equal employment opportunity program. Responsibilities include monitoring all equal employment opportunity activities and reporting the effectiveness of the affirmative action program as required by Federal, State, and Local agencies. The President of Best Ever Construction Company will receive and review all reports on the progress of the program. If any employee or applicant believes he or she has been discriminated against, please contact John Hancock, Director of Human Resources at (address and phone number).

(Name and signature of President of Company and date signed)

Appendix D: Sample EEO Policy Supervisory Meeting Agenda

Best Ever Construction Company EEO Supervisory Meeting Agenda Company
Headquarters

123 Main Street Anywhere, USA February 26, 2018

2:00 PM

1. Name of company EEO officer and description of duties and responsibilities.
2. Explain equal opportunity policies, affirmative action plan including recruiting, hiring procedures, and minority / female applicant referral by employees, Include sexual harassment and workplace violence policy.
3. Explain OFCCP goals that are currently in force for employing minorities and females.
4. Review complaint procedure and stress importance of documentation and timeliness.
5. Advise everyone to include direction in their toolbox meetings for their crews to read the project bulletin boards.
6. Announce “no segregated facilities.”
7. Explain Department of Labor minimum wage schedules.
8. Prime contractors need to review methods of monitoring subcontractors, including lower tiered subcontractors.



Appendix E: Sample Affirmative Action Plan

Equal Employment Opportunity Officers

The Large Construction Company Equal Opportunity Officer is:
(Name, address and phone number)

The responsibilities of the company EEO officer or designee shall include, but are not limited to the administration and coordination of the Affirmative Action Program, the investigation of any complaint of discrimination and the implementation of the EEO policy and affirmative action program. Responsibilities also include the periodic review of the company employment records and practices assure that the company's affirmative action program and EEO policy is being administered on a nondiscriminatory basis and the initiation, as necessary, of changes to the affirmative action program and/or the company's employment policies.

Dissemination of the Affirmative Action Program & EEO Policy

The dissemination of the company's affirmative action program EEO policy is essential to enhance the implementation of the program and to ensure positive results. The company will conduct a continuing program of internal and external dissemination.

Internal Dissemination

The EEO officer shall inform and instruct all supervisory employees of the company's policy of Equal Employment Opportunity and request each supervisor to follow and enforce the policy within his/her area of supervision.

The company shall provide opportunity for the EEO officers to review and instruct supervisory employees in their responsibilities under the affirmative action program and EEO policy semiannually.

The company will make its equal employment opportunity policy known to all employees through posted notices, handout notices, employee meetings and internal company publications.

External Dissemination

The company's equal employment opportunity policy shall be sent to all regular recruiting sources, including unions.

When advertising in newspapers or other publications for employees, the company shall include in the ad the statement, "an equal opportunity employer minority/ female," and such ads shall be placed in newspapers and publications which have a large circulation among females and minority groups in the area from which the work force is derived.

The company will make their equal employment opportunity policy known to all nonexempt subcontractors, vendors, and suppliers.

Recruitment

When recruiting employees not covered by valid collective bargaining agreements,

the company will conduct, on a personal basis, systematic and direct recruitment through public and private employee referral sources likely to yield handicapped individuals, Vietnam era veterans, minority group applicants, and females, including schools, colleges, and minority and handicapped group organizations. In addition, the company shall personally notify present handicapped employees, Vietnam era veteran employees, minority group employees, and employees of the openings and shall encourage employees to refer handicapped individuals, Vietnam era veterans, and minority group and applicants for employment.

Training Programs

The company will seek the inclusion of qualified handicapped individuals, Vietnam era veterans, minority group members and females in any pre-apprenticeship, apprenticeship, supervisory, on the job or other training programs in which the company participates, to assist in locating, qualifying, upgrading and increasing the skills of handicapped individual, Vietnam era veterans, minority group and female employees and applicants for employment.

The company presently participates in the following apprenticeship and/or training programs:

(List apprenticeship programs)

The company also conducts in-house training programs in the form of a Supervisory Conference, Construction Management Seminar and Educational correspondence courses.

Union Actions

The company shall coordinate their efforts with and request the cooperation of the unions representing their employees as an aid to increasing handicapped individuals, Vietnam era veterans, minority group, and female representation within the unions and affecting a greater number of such persons referred from the unions. The company shall meet regularly with the various union representatives to discuss and seek ways of increasing the number of handicapped, minority group and female journey workers and apprentices within the unions, the training programs, and the referral systems.

The company will, when participating in the negotiations of collective bargaining agreements with the unions, seek to include language that will be conducive to the improvement of referral and employment of minorities, females, handicapped persons, and Vietnam era veterans.

The company shall advise the unions in writing of its Equal Employment Opportunity Policy and request that the policy is posted in the union's office. In the event the union is unable to provide minority and referrals, the company shall take actions necessary to remedy underutilization.

Minority / Female Subcontractors

When subcontracting work the company will solicit, by letter and/or personal contact, bids from minority/female subcontractors and subcontractors with minority group representation among their employees. Information to help identify such subcontractors will be obtained from minority group organizations, contractor organizations, the Small Business Administration, and other Federal or State



agencies. The company will, where such minority group contractors are available, offer to counsel and otherwise offer assistance to help them to be competitive.

Records and Reports

The company will keep such records as are necessary to determine compliance with, and progress under, the company's Equal Employment Opportunity Program. The records kept by the company will be designed to indicate:

- The number of minority, handicapped and female employees in each work classification during each period of contract performance
- To the extent permissible under state law, the name and address of each minority group, handicapped and female applicant for employment who was not hired and the reason they were not hired
- The progress being made in cooperation with the unions to increase minority, handicapped and female employment opportunities
- The progress being made in locating, hiring, training, qualifying and upgrading minority, handicapped and female employees
- The progress being made in securing the services of minority group subcontractors. The general progress being made as established by inspection, review, reports and surveys, by each subcontractor used by the company, under each subcontractor's Equal Employment Opportunity Program

All such records will be retained for a period of three years following completion of the contract work and will be available at reasonable times and places for inspection by authorized representatives of the appropriate state and federal agencies.

Goals and Timetables

As one of the primary purpose of an Affirmative Action program the company, through its district offices and projects, will periodically conduct an Employment Analysis of its workforce for determining the utilization and/or underutilization of minority and female persons. The officer will conduct statistical analysis as necessary to determine the utilization by location of the project.

When working in an area subject to employment goals for minority and female employment as established by the Office of Federal Contract Compliance Programs or by an approved Home Town Plan, the company will strive to achieve such goals. When working in a location where a Home Town Plan does not exist, the company, as necessary, will establish its own goals. These goals will be consistent with the number of minorities and females in the Standard Metropolitan Statistical Area (SMSA) work force.

These reports will be analyzed annually for comparison with the goals of the program and effectiveness of the program success thus far. Should current efforts fail to meet the expected success, the program will be evaluated, and changes implemented to improve the success of efforts.

Appendix F: Sample Workplace Violence Policy

Sample 1

MEMORANDUM FOR EMPLOYEES OF THE DEPARTMENT OF _____ FROM:
DEPARTMENT OF AGENCY HEAD
SUBJECT: Workplace Violence

It is the [insert Department or Agency name]'s policy to promote a safe environment for its employees. The Department is committed to working with its employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. While this kind of conduct is not pervasive at our agency, not agency is immune. Every agency will be affected by disruptive behavior at one time or another.

Violence, threats, harassment, intimidation, and other disruptive behavior in our workplace will not be tolerated; that is all reports of incidents will be taken seriously and will be dealt with appropriately. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm. Individuals who commit such acts may be removed from the premises and may be subject to disciplinary action, criminal penalties, or both.

We need your cooperation to implement this policy effectively and maintain a safe working environment. Do not ignore violent, threatening, harassing, intimidating, or other disruptive behavior. If you observe or experience such behavior by anyone on agency premises, whether he or she is an agency employee or not, report it immediately to a supervisor or manager. Supervisors and managers who receive such reports should seek advice from the Employee Relations Office at xxx-xxx-xxxx regarding investigating the incident and initiating appropriate action. [PLEASE NOTE: Threats or assaults that require immediate attention by security or police should be reported first to security at xxx-xxx-xxxx or to police at 911.]

Sample 2

(This sample policy has been written in general terms and is not to be construed as a substitute for legal or management advice.)

Our goal is to strive to maintain a workplace free from intimidation, threats, or violence. This includes, but is not limited to, intimidating or threatening behaviors, physical or verbal mistreatment, vandalism, sabotage, use of weapons, carrying weapons onto company property, or any other act, which, in management's opinion is inappropriate to the workplace. In addition, we do not tolerate bizarre or offensive comments regarding violent events, even if made in just and/or bizarre or offensive behaviors.

We prohibit the use of company property, such as vehicles, telephones, fax machines, or e-mail in threatening or inappropriate ways. Employees who feel that they have been subjected to any of the behaviors listed



above should immediately report the incident to (designate appropriate person or persons).

Employees and non-employees who observe or have knowledge of any violation of this policy should follow the same reporting procedure. We request the support and cooperation of all employees in this effort.

Complaints will receive prompt attention and the situation will be investigated. Based on the results of the investigation, management will take disciplinary or other actions as appropriate.

Employees should directly contact proper law enforcement authorities if they believe there is an immediate threat to their own health and safety. Dial 911. We do not tolerate retaliation for making a complaint or participating in the investigation of a complaint. If you feel that you have been retaliated against, please follow the reporting procedure described above.

(Signature and date of President of the company)

Appendix G: Instructions for 1391 Federal Aid Highway Construction Contractors Annual EEO Report

Read the instructions , as there are changes in the reporting for 2019.

The FHWA 1391 report is required for all primes and subcontractors (with subcontracts that equal or exceed \$10,000) on federally funded contracts that have construction activity during July. The staffing data should represent the project work force in all or any part of July. This report is NOT required for contracts that are state funded only. For 2019, contractors will fall into one of two groups:

Group 1

Payrolls in LCPtracker This group of contractors is working on federally funded projects at any point in the month of July 2019. These projects that are in LCPtracker are single year and/or multi-year projects that have been in LCPtracker for a while, or it is any regular federally funded project that went to ad after 1/1/17. This group could also consist of local agency projects that opted into using LCPtracker on a CDOT project. All projects in this group are using LCPtracker for payroll submission.

If you are NOT using LCPtracker, you are NOT in this group.

All contractors in this group will need to make sure that their July payrolls are completely up to date as of Friday, 8/16/2019. This means that all subcontractor payroll will have to be submitted to primes by the 9th of August. Per federal regulation, contractors are required to submit their payroll information for all laborers and mechanics (and anyone performing work that is manual in nature) as well as the clerical staff, foremen, supervisors, and managers (officials) for the last week worked in the month of July on any federally funded construction project, even if these latter classifications do not appear on payrolls. If contractors are working on different federally funded projects in the month of July, contractors will report payroll information separately for each project, just like they normally would.

The information for Group 1 will be collected by the Colorado Department of Transportation using the payroll information that the contractors will have submitted in LCPtracker by August 9, 2019.

Group 2

Payrolls not in LCPtracker This group of contractors is also working on federally funded projects at any point in the month of July, but these projects are not utilizing LCPtracker. These are local agency projects who have opted not to use LCPtracker and other projects that started any time before 1/1/2017 and were still in an active construction phase in July of 2019. These projects are NOT in LCPtracker, and paper payrolls are being submitted. The contractors in this group will have to submit the FHWA 1391 through the Excel spreadsheet. Please see the



attached directions. Paper 1391 reports must be submitted to CRBRC in August. Prime contractors shall also copy project engineers on the FHWA 1391 submittal. Failure to submit the required information may result in future estimate payments being withheld.

The most current electronic version of the FHWA 1391 and the instructions may be found at <https://www.codot.gov/library/forms/fhwa-other-forms/fhwa-1391>

Instructions for FHWA 1391 Report for 2019

Contractors must report their own (PROJECT) workforce and ensure that all lower tier subcontractors that were active during the reporting time frame also submit their information electronically. The REQUIRED format for submission is via an Excel spreadsheet. Please note that a PDF version will not be accepted.

Prime contractors must ensure that their active subcontractors submit the report to them prior to submission to CDOT. All contractors must submit all reports for the project in the required Excel format to CDOT.

Prime contractors will send all reports for themselves and for their subcontractors to the Contract / Labor Compliance Specialist, monica.vialpando@state.co.us by Friday, August 16, 2019. Prime contractors shall also copy project engineers on the FHWA 1391 submittal. Failure to submit the required information may result in future estimate payments being withheld. The most current electronic version of the FHWA 1391 and these instructions may be found at <https://www.codot.gov/library/forms/fhwaother-forms/fhwa-1391>.

When emailing the spreadsheet, please title the subject line as follows: Region number (if known), CDOT Project Sub Account Number (5 digit number), and the name of the contractor or subcontractor. This is what it should look like: R5 / 12345 / ABC Contractor. For contractors who do not work the month of July, an FHWA 1391 does not need to be submitted. Do NOT submit “No Work” statements on the FHWA 1391. Contractors shall list all projects and / or subcontractors who are not active in the month of July within the text of their email. *** DO NOT SAVE OR SUBMIT FORMS IN THE .PDF FORMAT AS THEY WILL NOT BE ACCEPTED. *** ALL project personnel on each federally funded contract where the company is a prime or a subcontractor (with subcontracts that equal or exceed \$10,000) needs to be reported. Include company officials, supervisors, and administrative personnel ONLY if they work on the specific project a majority of the time -- even if they do not appear on payrolls.

- DO NOT include project personnel if they are on the project only from time to time and do not have daily, on-site responsibility for project activity.
- DO NOT include home office personnel unless they are assigned exclusively to a project and appear on project payroll. This would involve primarily clerical personnel.
- DO NOT count project personnel or company trainees as apprentices or OJT's unless they are currently enrolled in a recognized and approved (by CDOT, US Department of Labor and/or FHWA) training program.
- DO NOT include OJT trainees/apprentices in Table A.

Table B and C should be filled out. Please complete the form as follows:

Box 1: Choose whether you are a prime contractor or subcontractor. Instructions for FHWA 1391 Report (2019) 2.

Box 2: Name and address of your company. 3.

Box 3: CDOT Sub Account Project Number for project being submitted. 4.

Box 4: Reporting contractor dollar value of project. 5.

Box 5: CDOT Project Number. 6.

Box 6: Region and Location of project (County and City). 7.

Box 7: Table A - DOES NOT INCLUDE OJT TRAINEES OR APPRENTICES.

Employment data lists all employees who are working for the company on the project for the week of July 2019 that is being reported. Insert the number of employees broken out by classification, gender, and ethnicity. The Excel columns and rows shaded in green are locked and the program will automatically total individual columns across and to the bottom of the form.

Use the most appropriate job category:

- Air tool operators and operators of power pavement saws, form setters, etc. should be listed as “Laborers - semi-skilled”
- Flaggers should be listed as “Laborers - unskilled”
- Operators of paint striping trucks are not painters and should be listed as either “Truck Drivers” or “Equipment Operators”
- Form builders are carpenters
- Welders are included in ironworkers
- List the employees who work in multiple classifications only once and in the classification in which they work the most frequently
- Professional services with no DB wages are not required to report
- DO NOT add categories

RACE and ETHNIC Identification:

- Black or African American (Not Hispanic or Latino) - A person having origins in any of the black racial groups of Africa.
- Hispanic or Latino - A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.



- American Indian or Alaska Native (Not Hispanic or Latino) - A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment. Instructions for FHWA 1391 Report (2019)
- Asian (Not Hispanic or Latino) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino) - A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- Two or More Races (Not Hispanic or Latino) - All persons who identify with more than one of the above five races.
- White (Not Hispanic or Latino) - A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Table C Data must match Table B for the ethnic and gender reporting for the apprentice and/or OJT trainees. 8.

Box 8: Indicate the person responsible for the preparation of the form by typing in their name and title. Original documentation shall be signed and maintained by the Contractor and subcontractors for a period of 3 years. No original signature is required. 9.

Box 9: Date the contractor prepared the form. 10.

Box 10: To be completed by CDOT representative.

Upon completion of the form, select “File” and “Save as” an Excel document.

Appendix H: Adding Forms to LCPtracker

One of the benefits of LCPtracker is the fact that the eDocuments tab can serve as a repository for all forms that are associated with payroll. Some of the very common forms that are uploaded are the Contractor Fringe Benefit Statement (CFBS) and the OJT Forms. This is how you can add forms to LCPtracker.

Download Document Templates

You can download any documents the administrator has posted for your use by going to eDocuments > Download Document Templates. Simply click on the underlined link and your browser will start the viewing/download process. The agency may post some documents in editable word or PDF format so that the contractor can save to their computer, fill in the proper fields, save and then upload the same file to submit under Upload Documents.

Document Types for Upload

The agency specifies what documents are allowed/required to be uploaded. The list of documents that each agency requests will show in the Document Types for Upload table. Documents can be

- N - Not Required meaning that they are sent on request from the Administrator and/or Prime Approver
- R - Required meaning that they are required by everyone
- Y - Yes, meaning that that they are required before you can submit CPR's.

Note some documents that are flagged Y may have a delay set on them; a 30 day delay would allow submittal of end of month reports. This means you will have 30 days to submit the required document and then after this time period the LCPtracker system will not allow any other payrolls to be certified until the document is submitted.

Some documents may also have an expiration frequency, which means they need to be re-uploaded after that many months from your Document Date.

Upload Documents

The upload documents feature, allows you to upload documents that the administrating agency requests. The Upload Documents button provides the ability to upload documents directly from your computer into your administrator's database. To upload a document, have the document available on your computer. The document can be almost any type that can be viewed by internet browser: txt, pdf, xls, doc, tif, etc.

Project Name- you will need to choose the project the document is for (some documents may be for all projects, but this will depend on the settings from agency requesting them)

Sub To- this will filter by who you are a sub to on a specific project (this may have options to select if multiple assignments have been enabled by the administrator)

Document Date- this is always a required field. You may use the calendar icon to



choose your date, or type it in MM/DD/YYYY format

Expiration Date- some agencies may require that this be filled in; again use calendar icon or type in date

Document Type- you will choose the document name from the drop down based on the titles the agency has defined

Description- some contractors may choose to use this field for their own notes (this is still viewable by your administrator)

Select employee the document relates to if appropriate Week end date the document relates to if appropriate

Comments- some contractors may use for their own notes and comments (also viewable by your administrator)

Select the file to upload- browse your computer to find the document you want to upload

E-Signature Password- required to save the document to the system. If you don't know or remember your eSignature, you can create a new one under Set Up > Edit/Reset eSignature

View Documents

When you click on the View Documents button this screen will appear. Select the filter parameters if you want to filter the list by

- a certain project
- contractor, if you want to see those submitted by your subcontractors
- who you are a sub to on a specific project (this may have options to select if multiple

assignments have been enabled by the administrator)

- document type
- status of the document
- dates - Document date or Submittal date.

Once filters have been selected, you'll click on Load Data to see those documents. Some fields are editable when you go into the Details. You will be able to read any Administrator Notices that may have been added, as well as if the administrator and/ or Prime Approver has accepted or rejected the uploaded eDocument. You can also edit information about the document you have uploaded.

Clicking on View will bring up the actual document that was uploaded.

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