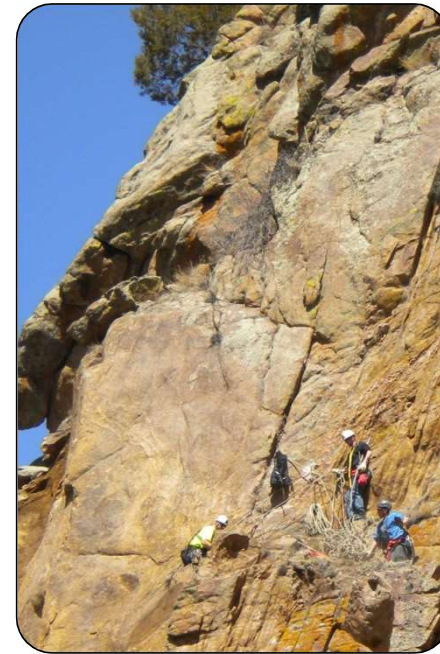




**COLORADO**  
Department of  
Transportation



## Civil Rights and Labor Compliance

Through the Life Cycle of a  
Project



# Today's Schedule

## Part One - Bidding Requirements

- Contractor Registration
- Prime Contractor Prequalification
- Wage Decision & Bidding
- Local Agency & DB Wages
- OJT Training Requirements
- Small Business DBE & ESB

## Part Two - Award Process

- Sublet Permit Application -- 205
- DBE Utilization Plan
- Forms 1415, 1416
- FHWA 1273

## Part Three -- Pre-Construction Meeting

- Safety & Accident Prevention Plan
- Workplace Violence Policy, EEO Policy, and AAP
- Written Notification to OFCCP



## Part Three -- Pre Construction Cont.

- Nondiscrimination: Title VI
- On-the-Job Training Program

## Part Four - Active Project Compliance

- Bulletin Boards Postings
- ADA Requirements
- Prompt Payment to Subs & Reporting
- Release of Retainage to Subcontractors
- Form 1420
- Contractor Compliance Reviews
- FHWA 1391

## Part Five - Labor Compliance

- Regulations
  - Davis-Bacon, CWHSSA, FLSA, Copeland Act
- Trucking
- Certified Payroll Records
- Wage Decision Info. & Conformances
- CDOT Form 280



## Part One – Bidding Requirements

### Part One - Bidding Requirements

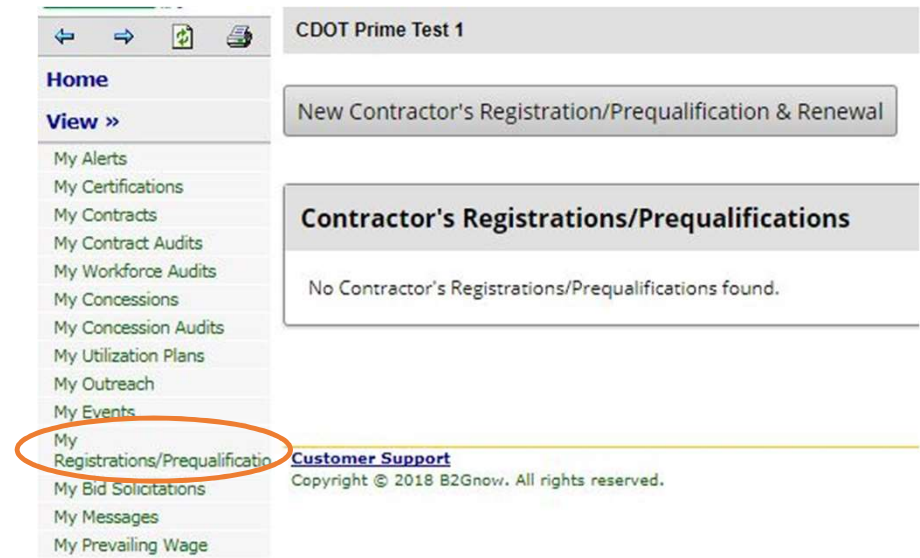
- Contractor Registration
- Contractor Prequalification
- Using the Wage Decision
- Local Agencies - D-B Determination
- OJT Training Requirements
- DBE & ESB Contract Goals





# Contractor Registration

- All firms working on a CDOT job must register with CDOT in B2GNow
- Annual renewal required
- Available immediately
- 205 approval is conditioned upon registration
- Verify that your firm is registered:
  - Login to B2GNow
  - From the Left Menu, Select:
    - View, then
    - My Registrations/Prequalifications





## Contractor Prequalification

- Now submitted electronically through B2GNow
- Available immediately for new prequalifications or upon renewal of existing prequalification
- Different from contractor registration
- Required to bid as a Prime (including ESB Primes)
- Appear on the Prequalified Contractor Directory (accessible from the B2G Login Page)

### REGISTRATION AND PREQUALIFICATION

Do highway construction work with CDOT

Register & Prequalify

Search Vendor Directory

For more information on Prequalification, please contact Marci Gray at (303)757-9297.



## Using the Wage Decision

- How do I know if Davis-Bacon wages are required for this job?
- Where is the wage decision located?
- If I can't find a copy of the wage decision, how do I get a copy of it?
- More in depth information in the manual





## Local Agencies

- Local agency manual available as a resource
  - Current version 2016
- FHWA 1273 applies
  - CDOT specifications
- Projects located on local roads and/or rural minor collectors exempt from Sections IV and V only (labor standards)
  - Exemption based on functional classification of road
- Davis Bacon applies on Safe Routes and on projects with TAP funds.





## On-the-Job Training Program & Goals

- CDOT's Special Provision is an implementation of 23 USC 140(A).
- Intent to develop journey workers in skilled craft classifications (Construction)
- Training and upgrading geared toward minorities and women
  - No discrimination allowed
- Goals
- Preapproved Contractor plan required:
  - CDOT
  - FHWA
  - CCA
  - USDOL - Office of Apprenticeship







## Disadvantaged Business Enterprise (DBE) Program & Goals

- Required by the federal government
- Race conscious
- State-funded projects do not have DBE goals
- Each federal-aid project is evaluated for a DBE goal and some projects are evaluated for ESB goals by the Region Civil Rights Office (RCRO)
- DBE goal is included in the DBE Project Worksheet in the project advertisement
- CDOT's overall DBE goal is 12.15%





## Emerging Small Business (ESB) Program & Goals

- State approved program
- Race neutral
- Design-Build and P3 projects may have a ESB goals or target participation percentage for prime incentives
- Projects of \$1 million or less can be restricted for bidding by ESB primes
  - Certified as an ESB prior to bid date
  - Meet bonding and insurance requirements
  - Perform at least 30% of the contract





## New Processes and Procedures Pre Bid

- Projects Advertised as of 2/9/2017
- 1413 (Bidder's List) No Longer Collected with Bid
- This information will be collected with the upcoming new vendor registration for contractors.
- All contractors must register and renew annually.
  - Primes and subs
  - Suppliers
    - Simply having an account in vendor registration DOES NOT mean you are registered.
    - Implementation for vendor registration coming later.





# DBE Processes and Procedures With Bid Package

- 1414 - Anticipated DBE Participation Plan
- New online submission - no longer needs to be emailed to CRBRC

Letting: 20170202  
2/2/2017 10:00:00 AM

Colorado Department of Transportation

Contract ID: C20757  
Call: 001

## COLORADO DEPARTMENT OF TRANSPORTATION ANTICIPATED DBE PARTICIPATION PLAN

Contact:  
Contract Goal:  
Contact Phone:  
Region:  
Contact Email:  
Preferred Contact Method:

### DBE Commitments

DBE FirmName:  
Work to Be Performed:  
Commitment Amount:  
DBE Credit Amount:



## Part Two – Award Process

- DBE Utilization Plan
  - Form 1415
  - Form 1416
- Required Contract Provisions --1273



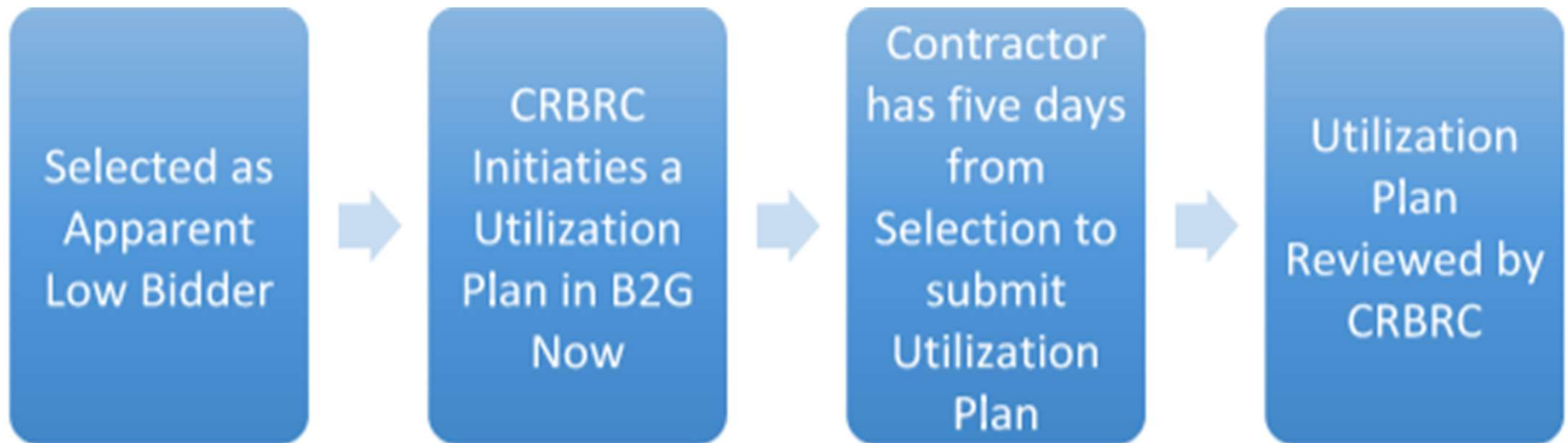


# DBE Processes and Procedures: Key Terms

- **Apparent Low Bidder:** The prequalified bidder with the best or lowest price
- **Utilization Plan:** An electronic form on B2GNow that lists all firms with DBE commitments & the amount of those commitments
- **DBE Commitment:** The amount of work (in dollars) promised to a specific Disadvantaged Business Enterprise.
- **DBE Credit or Eligible Participation:** The portion of a DBE's subcontract/payment amounts that will count toward the DBE goal
- **Subcontract Amount:** The total value of a subcontract. Must exceed or equal the Commitment Amount. (Not reported Pre-Award)
- **DBE Work Codes:** NAICS codes indicating the type of work the DBE receives credit for performing. Must match Work Description to count for credit.
- **Work Description or Work to be Performed:** A description of all work DBE will perform on the project



## DBE Processes and Procedures





# DBE Processes and Procedures: Utilization Plans

- Replaced CDOT Form 1417
- Required per Federal DBE Regulations on any project with a DBE goal
- Submitted electronically through B2GNow by Prime Contractor prior to contract award
- Lists all firms with a DBE commitment
- Should only reflect the commitment amount
- Reviewed by CDOT CRBRC
  - Notices of rejection, return, or approval automatically generated by the system upon CRBRC review
  - Returned plans must be resubmitted by the original deadline.





# DBE Processes and Procedures: Utilization Plans

- To Complete the Plan, you will need to know:
  - Subcontractor's legal name
  - Subcontractor B2G contact person
  - Amount of commitment (\$)
  - All work to be performed by sub
  - Type of participation (i.e. supplier, subcontractor, etc.)
- Required Attachments:
  - 1415 (Always)
  - 1416 (As Needed)



# DBE Processes and Procedures: Form 1415

- DBE Commitment Confirmation form
- Both Prime and Sub information & signatures required
- Gathers second tier subcontractor information from DBE
- Captures only commitment amount NOT total subcontract amount
- Submitted as attachment in B2G
- Must match information provided electronically
- Signatories must have signing authority for the firm.

COLORADO DEPARTMENT OF TRANSPORTATION				
COMMITMENT CONFIRMATION				
SECTION 1. This section must be completed by the Contractor.				
Project:			Project:	
Contractor:			Phone:	
Contact:			Email:	
DBE Firm Name:			DBE Phone:	
DBE Address:			DBE Email:	
Commitment Details				
Category	Work to be Performed	DBE Work Code(s)	Commitment Amount	Eligible Participation
Construction				
Trucking				
Supplier				
Service				
Total				
This section must be signed by an individual with the power to contractually bind the Bidder/Contractor. You declare under penalty of perjury in the second degree and any other applicable state or federal laws that the statements made in this document are complete, true and accurate to the best of your knowledge.				
Bidder/Contractor Representative	Title	Signature	Date	
SECTION 2. This section must be completed by the DBE. (Attach additional pages if necessary).				
This document is not a contract with the Bidder/Contractor; it is an acknowledgement of the obligation that the Bidder/Contractor is making to CDOT. This amount listed above may be less than the subcontractor or purchase order amount, but can never be more, and shall not reflect any mark up by the Bidder/Contractor. All questions must be answered.				
Are you contracting directly with the Bidder/Contractor or with one of its subcontractors? If with a subcontractor, provide the firm name.				
Will you be purchasing supplies or materials or leasing or renting equipment from the Bidder/Contractor or its subcontractors? If so, explain.				
Do you intend to sub-contract any portion of the work listed above? If yes, state to which firms, what work and the approximate amount. Include trucking subcontractors and owner-operators.				
Will you be providing trucking services on this project? If so, state how many of your own trucks and employees you will have on this project.				
Who within your firm will be supervising and responsible for your firm's work on this project?				
Will you be acting as a broker on this project? If so, state what you will be brokering and your approximate brokerage fee.				
Will you be acting as a supplier on this project? If so, please state what you will be supplying and whether you will manufacture the items.				

**Commitments made through this process are binding contractual obligations even if the total commitment amount exceeds the DBE goal. CDOT will assess dollar for dollar sanctions if any commitment is not fulfilled even if the goal is met.**



# DBE Processes and Procedures: Form 1416

- Good Faith Effort Report
- ONLY submitted if prime won't make DBE goal.
- Submitted in the Waiver Section of the UP
- Include any necessary documentation to prove GFE.
- Guidance and examples of GFE are located on CDOT's external website:

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



# DBE Counting: Commitment vs Credit

## Commitment

- Must equal goal at award; must fulfill commitments at completion
- Specific DBEs designated by the prime
- Commitments and any modifications require civil rights approval in advance (1415 or 1420)
- Commitments apply only to first tier subs, but lower tiers effect overall counting
- Commitments are not concerned with participation type.
  - It is the bidder's responsibility to know what percentage of the commitment will count toward the overall goal
- Commitments are must be fulfilled regardless of commercially useful functions

## Credit

- Must equal goal upon completion
- Any DBE on the project *could* count for credit
- No prior civil rights approval required (except 205)
- Subcontractors must be DBE certified to perform the work contracted
- No credit for non-certified firms at any tier
- Participation Type Matters (Suppliers)
  - Manufacturers - 100%
  - Dealers - 60%
  - Brokers - Reasonable broker fee
- Commercially Useful Function (CUF)
  - If not performing a CUF, then no work will count
  - Cannot be a pass through
  - Work should be in accordance with industry practice
  - If not performing 30%, it is presumed not to be performing a CUF



# How to Submit the UP in B2G

## Utilization Plan Summary

Organization	Colorado Department of Transportation
Proposal Reference	C19644: STA 095A-018 (19644) On Sheridan Blvd. from Hampden Ave. to Arizona Ave.
Phase	00000
Status	Original, version 0
Notification Date	<b>Pending Submission</b>
Due Date	12/4/2017 by Erica Downey 12/9/2017 5:00 pm US/Mountain

## 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)

Step 1 →

## Step 2: Provide Subcontractor Information

Use this section to add subcontractors to the Utilization Plan, if applicable. Click the Add Subcontractor button to get started. Firms that do not perform commercially useful functions may not be counted toward DBE, and/or ESB utilization.

### Certification Types Recognized for this Utilization Plan

Firms selected for credit on this utilization plan must hold one of the recognized certification types listed in this box.

Organization	Certification Type
City and County of Denver	ACDBE - Airport Concessionaire Disadvantaged Business Enterprise
City and County of Denver	DBE - Disadvantaged Business Enterprise
Colorado Department of Transportation	ACDBE - Airport Concessionaire Disadvantaged Business Enterprise
Colorado Department of Transportation	DBE - Disadvantaged Business Enterprise
Colorado Department of Transportation	ESB - Emerging Small Business

### Prime Contractor

Vendor Name	Cert	Inc in Goal	\$ Total	\$ Self Perf	\$ For Credit	Actions
<span style="border: 1px solid green; padding: 2px;">P</span> CDOT Prime Test 1	NS	No		\$0 0.00%	-	<a href="#">Edit</a> <a href="#">View</a>

Step 2 →

### Subcontractors

No subcontractors assigned to this utilization plan.

## Step 3: Provide Waiver Request Details (if applicable)

A Waiver is required if the Utilization Plan has a status of below goal. To request a waiver provide a detailed explanation of the prime's business process, an inventory profile, an explanation as to why a waiver is being requested, and a supplier/subcontractor diversity plan or policy if applicable. To attach documents specifically related to the waiver request click **Attach Waiver Files**. When finished click **Save Waiver Details** before leaving the plan or attempting to complete another step.

### Goal & Waiver Summary

Goal Type	Goal	Plan	Status	\$ to Reach Goal	Waiver Status
DBE	12.00%	0.00%	-12.00% below goal	\$0	<b>Waiver required</b>
Enter DBE waiver request details and attachments:					
ESB	0.00%	0.00%	Met goal		
Total	12.00%	0.00%	-12.00% below goal	\$0	

Step 3 →  
(As Needed - 1416)



# How to Submit the UP in B2G: Adding Subs

\* required entry

## Subcontractor Assignment

Subcontractor \* [Get Subcontractor](#) from vendor database

Contact Person \*

Address \*

Search for subs and identify contact person

## Applicable Vendor Certifications

Assign a vendor and [click to refresh certification list](#).

## Subcontractor Details

Subcontractor Tier \*

Proposed Amount & Percent \* Subcontracts to: [Prime] CDOT Prime Test 1

By Amount: \$  **Dollar Amount of Commitment**

By Percent:  %

Yes - Payments to this contractor will count towards the  goal. **Select "DBE"**

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

Select 1

Work Description \*

Work Codes **List All Anticipated Work**

**Add Work Codes to support all types of work. Select from pre-approved codes or add as necessary. Only work that matches a pre-approved code will count for credit.**

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

(mm/dd/yyyy)

(mm/dd/yyyy)

Attached File(s)  **Attach 1415**

Comments



# Required Contract Provisions Federal-Aid Construction Contracts FHWA 1273

- I General
- II Nondiscrimination
- III Non-Segregated Facilities
- IV Davis-Bacon and Related Act Provisions
- V Contract Work Hours and Safety Standards Act Provisions
- VI Subletting or Assigning the Contract
- VII Safety: Accident Prevention
- VIII False Statements Concerning Highway Projects



## Part Three – Pre-Construction Meeting

- Permit Sublet Application
- Safety & Accident Prevention Plan
- Workplace Violence Policy
- Equal Employment Opportunity Policy
- Affirmative Action Plan
- Nondiscrimination: Title VI
- On-the-Job Training







## Sublet Permit Approval (205)

### Subcontracting

- No changes to the specification (108.01) - on hold
- CR staff will enter 205s in B2G.
  - Each region should follow their own processes in Site Manager
- Prime must perform at least 30% of the work with own forces.
  - Suppliers are (direct to prime) included in the 30%.
  - Leased employees may be included in 30%.
- Must request approval from CDOT with a 205.
- Sub cannot begin work until 205 is approved.
- \*\*\*\*Prime must provide an updated 1425 for all suppliers.\*\*\*\*
- Process continues to be the same: prime - engineer - RCRO





## Safety & Accident Prevention

- Contractors must comply with all applicable federal, state, and local laws to protect workers on the project.
    - Safety, Health, Life, and Sanitation
  - Obligation to protect the traveling public
  - Contractor must have an accident and prevention plan
  - Standard Specifications 107.06
- Project Safety Manager & Alt
  - Identify High Risk Activities
  - Location and Time of Safety Mtgs
  - Safety Compliance for Visitors
  - Safety Inspections
  - Signed Certifications
  - Safety Stand-Down Plan
    - Compliance Steps
  - Procedures for Suspected Drug / Alcohol Impairment



## Workplace Violence Policy

- Standard Specifications 101.95 & 108.07
- Not tolerated
- Removed from project
  - CDOT employee/Consultant
  - Contractor's employee
- Written policy
- Office of Personnel Management guidelines





# EEO Policy

- Meetings
  - Company
    - Date/Agenda
    - Roster
    - Minutes
  - Project
    - Employees
    - Subcontractors
- Complaint and Grievance Procedures
  - Company source
  - Outside sources
    - Colorado Civil Rights Division
    - Equal Employment Opportunity Commission





# Affirmative Action Plan

- AAP different from EEO policy
  - Specific actions for promotions
  - Ensures EEO for all employees
    - Goals
    - Timetables
- Goal of an AAP
  - Workforce entrance based on competition
- Job performance standards
  - Occupational qualifications
- Disseminated to all employees





## Title VI (Non-Discrimination Contracting)

- Title VI of the Civil Right’s Act of 1964 states that “no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- DOT Title VI Regulation-49 CFR part 21
  - Provides guidance of the provisions of Title VI of the Civil Rights Act of 1964
- All discrimination complaints must be submitted to Eboni Younger-Riehl in the Civil Rights and Business Resource Center.





## Title VI (Non-Discrimination Contracting)

- Title VII prohibits discrimination in employment practices based on race, color, sex, national origin or religion.
- Title VI prohibits discrimination based on race, color, or national origin as it relates to any program or activity receiving federal financial assistance. Title VI applies even if the project is not federally funded. FHWA's Title VI requirements also protect against discrimination based upon age, sex
- National origin discrimination can result from the failure to provide meaningful access to CDOT's programs or activities by Limited English Proficiency persons (Individuals who have a limited ability to read, write, speak, or understand English)
- Language for Limited English Proficiency individuals 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.





## Title VI (Non-Discrimination Contracting)

- The contractor is responsible for complying with CDOT's Title VI program and all Limited English Proficiency requirements.
- The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- CDOT contractors shall seek to communicate with LEP populations and provide LEP individuals meaningful access to CDOT programs and activities.
- For all non-employment related discrimination complaints please contact Eboni Younger-Riehl.







## On-the-Job Training

- Training Commitment
  - CDOT Form 1337
  - Contractor's Training Program Submittal(s) at Preconstruction Conference
- Trainee approval
  - Registration of Trainee/Apprentice in approved program
  - CDOT Form 838
    - RCRO approves
    - For set up in LCPtracker, contact Joni and Mónica via email with a copy of the approved 838 and a document showing trainee rates for all levels.
- Pay scale (on 838)
  - Base rate and fringe benefits
  - Classification(s) and code(s)
- Monthly submittal
  - CDOT Form 832 with engineer approval.





## Part Four – Active Project Compliance

- Bulletin Board Postings
- ADA Requirements
- Contractor Compliance Reviews
- FHWA 1391
- Prompt Payment to Subcontractors
- Prompt Payment Reporting
- Form 1420: DBE Plan Modification
- Release of Retainage





## Bulletin Board Postings

- Must be prominently displayed
- No binders allowed
- May use sandwich boards
- Easily accessible by all employees
- Posting must be protected from fading, water damage, etc.
- If posters are damaged or illegible, replace promptly
- Only include wage decisions applicable to project
- Complete list in Resource Material section

Bulletin board poster website

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





## Americans with Disabilities Act of 1990 (as amended in 2008)

- The Americans with Disabilities Act is a law that prohibits discrimination on the basis of disability.
- The Manual on Uniform Traffic Control Devices (MUTCD) is known as the national standard for accessibility considerations.
  - At minimum, there should be an equivalent level of accessibility.
- Make sure detours are reasonable.
- If you are unsure as to whether you are providing appropriate accommodations, please call for help!

ADA laws impact projects in two ways:

They prohibit state and local governments from discriminating against individuals with disabilities in access to and use of

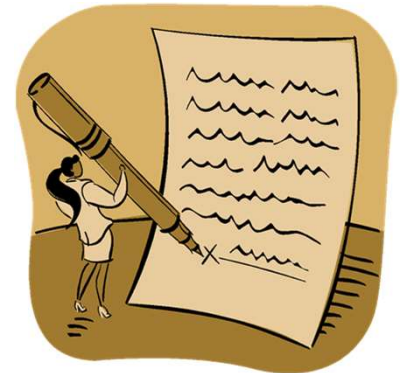
- their services, programs, activities.
- their transportation services, programs, and activities.

Bottom line: Physically challenged people should have equal access to roads that have access accommodations AND they should have equal access to public transportation.



## Contract Compliance Reviews

- Required by FHWA to verify compliance with the Federal-Aid contract
  - Notification from RCRM
- Focus is on contractor work force
- Project Review
  - Specific project
  - Contractor and all subcontractors
- Area Review
  - All projects within a geographic area
  - Contractor only





## **Federal-Aid Construction Annual EEO Report – FHWA 1391**

- FHWA 1391 - Annual EEO report
- Contractors on local agency projects
  - All active subcontractors
- Electronic filing
  - Excel format only
- Information Per Project
- Last full work week of in month of July 2017 - no June or August days



## DBE Compliance: Who's Counting?

- Firms may count for DBE credit towards the goal without a 1415 commitment
- All DBE firms with a 205 may potentially count for credit if performing a certified function
  - RCRO will determine whether firm counts for credit
- Check if a firm is counting for credit in B2GNow
- You must complete CDOT Form 1432 for all firms counting for credit



Certified	Original Current	Type	Inc. in Goal	Compliance Audit	Final Pmnt
<a href="#">No</a>	\$86,687 \$86,687	Sub	No	✓	No
✓	\$2,700 \$2,700	Sub 100%	✓ DBE	✓	No
✓	\$31,000 \$31,250	Sub 100%	✓ DBE	✓	No



## DBE Compliance: CDOT Form 1432

- Commercially Useful Function Form
- Includes 3 questions for prime, 3 questions for DBE sub, 2 questions for CDOT engineer
- Must be submitted for each DBE participating for credit
- DBEs without 1415 may still count for credit
- Process:
  - Prime gives it to DBE sub
  - Sub returns it to prime
  - Prime verifies information and answers three questions
  - Engineer verifies information
  - Engineer gives to RCRM to review and upload







# Prompt Payment Specifications

## Overview

- Timely payments required to lower tier subcontractors and suppliers
  - Due based on progress payments
  - 7 day rule for payment to lower tiers
  - Engineer WILL authorize partial pay estimate (if contractor is not in a dispute)
- Reporting due by the 15th of every month for all subcontractors and any suppliers listed on the 1425.
- Confirmation due within 15 days of higher tier's reporting





# Prompt Payment Reporting

- All contractors making payments must report
  - Prime contractors must report payments received from CDOT
- Accessible by any user linked to firms account
- Collect historical data (i.e. not real time)
- Audits open on the 1st of following month
- Audit Period based on date of actual payment NOT work date, invoice date, or pay estimate
- Leave lines blank for firms paid by your lower tiers (except joint checks)

Audit Information	
Audit Response Status	Not complete 3 sub responses to Reporting deadline Audit will be locked
Audit Period	October 2017
Payment to Prime	Report Payment to
Marked As Final Audit?	No (mark audit as f

Subcontractor Payments for October 2017						
	Subcontractor	Certified	Type	Inc. in Goal	Actions	Paid Amount in October 2017
1	<a href="#">Cdot Sub 2</a> CDOT Sub Test 2 cdotsub2@b2qnovuser.com P 602-927-3554	✓	Sub 100%	✓ DBE	<a href="#">Submit Response</a>  YES	Not Reported
2	<a href="#">CDOT Sub Test 3</a> CDOT Sub Test 3 cdotsub3@b2qnovuser.com P 623-953-7848	✓	Sub	No	<a href="#">Submit Response</a>  NO	Not Reported



## Joint Checks

- Used to ensure payment to lower tiers or “commercially useful function” of DBEs.
- Joint checks to DBE must be approved by the RCRO
- Approval Process
  - Submit request signed by prime contractor and DBE in writing to Civil Rights.
  - RCRO will strive to issue approval within 48 hours of receiving all information to make a determination.
  - Can request approval of multiple joint checks at a time.
- Not to be used in a discriminatory manner.



## Prompt Payment Confirmation

- Non-Primes must confirm payment reported by higher tiers
- Prompted by the system
- Confirmation due within 15 days
  - Chance to request CDOT's involvement in resolving disputes or withholding
  - Failure to confirm/mark discrepant is tacit confirmation
- Applies to payments actually received during audit period
- Not concerned with work date, invoice date, or pay estimate

Note: Some prime contractors have been incorrectly reporting on behalf of their first tier subcontractors. If you are a second (or lower) tier and your audit shows \$0.00 but you were actually paid, it is crucial that you report the discrepancy.



# Ongoing DBE Tracking

- Audit Summary tab tracks progress toward contract completion and DBE goal based on payment data
- Categories based on goal and contract value are:
  - Current Award
  - Payments to Date
  - Difference
- Progress toward any commitments not tracked here

Prime: CDOT Prime Test 1

Current Value: \$6,000,000

Audit Summary - Total Contract					
	Current Award	Award Percent	Payments	Payments Percent	Difference (Payments - Award)
Prime Contract	\$6,000,000.00		\$1,459,150.00		
For Credit (4 subs)	\$540,000.00	9.000%	\$379,186.00	25.987%	16.987% above goal
For Credit to DBE Goal	\$540,000.00	9.000%	\$343,475.00	23.539%	14.539% above goal
For Credit to ESB Goal	\$0.00	0.000%	\$35,711.00	2.447%	2.447% above goal
Contract Progress	24%				
For Credit Progress	70%				

Award values may not match due to differences between overall contract goal and subcontractor assignments.



## DBE Plan Modification

- Contractor must make good faith effort throughout the project.
  - Commitments are binding obligations.
  - Failure to fulfill commitments or meet goals may result in sanctions.
- 1420 DBE Plan Modification
  - Tools for communication
  - Way to change approved commitments or waive a goal
  - Regulation says that this change must be in writing.
  - Federal language says that if prime does not fulfill DBE commitment and didn't get approval for termination, CDOT can take dollar for dollar sanctions.



## DBE Plan Modification

- Termination Procedures
  - Notice to the DBE, allowing five days to respond
  - Send a request to CDOT via form 1420
    - 1) Is there good cause to terminate?
    - 2) Can you substitute up to the goal? Yes - Substitution. No - Waiver.
- Substitution Requirement
  - Must demonstrate GFE to find substitute participation
  - If commitment exceeded the goal, must replace ONLY up to the goal
- Waiver Request
  - If not able to make the goal, either as a result of a change order or termination, then must request a waiver
  - Use form 1420 and document why participation cannot be obtained



## Good Cause for Termination

- 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
- ~~• CDOT eliminates work – DBE work will not have to be replaced~~
- Other documented good cause that compels termination





## Retainage

- CDOT withholds up to 3% of each progress payment as retainage
  - CDOT will release any unpaid retainage to the prime less any sanctions at the close of the project
- Primes may withhold retainage from subcontractors.
  - Sub may request release of retainage in writing prior to project close



## Release of Subcontractor Retainage

- Prime is obligated to release retainage to subcontractor if 205 work is “satisfactorily completed.”
  - Prime’s job to review the work and make sure that it is satisfactorily completed.
  - Once work is deemed satisfactorily completed, subcontractor is released from the project
- Project Engineer’s role
  - Per Construction Manual, engineers should confirm quantities upon request by prime
  - Confirmation from engineer does not constitute acceptance of the work.

**PAYMENT  
REQUIRED**



## Closing Out the Project

The RCRO will evaluate DBE participation based on payment information in B2G and determine whether to apply a payment reduction.

### Payment reduction possible when:

1. Contractor failed to fulfill a commitment without approved 1420;
2. Contractor failed to meet contract goal either by:
  - a. Not substituting after an approved termination or reduction or not increasing DBE participation in accordance with change orders; **and**
  - a. Did not get a waiver on an approved 1420.



## Part Five – Labor Compliance

### Part Five - Labor Compliance

- Regulations
  - Davis-Bacon
  - CWHSSA
  - FLSA
  - Copeland Act
- Certified Payrolls
- Wage Conformance
- Payroll Information
  - Fringe Benefits
  - Deductions
- Trucking





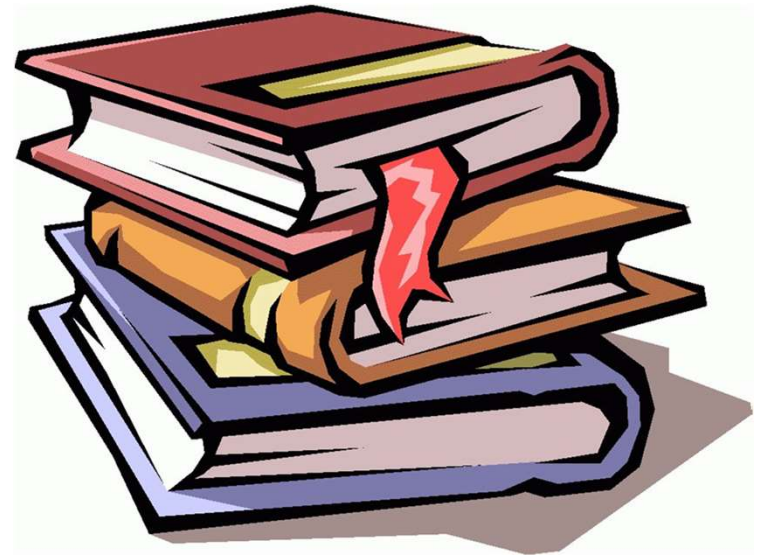
## Federal Regulations

Davis-Bacon Act (DBRA)

Contract Work Hours and  
Safety Standards Act (CWHSSA)

Copeland Act

Fair Labor Standards Act (FLSA)





## Wage Decisions

- Nine decisions (Applicable wage decision in contract)
  - Not interchangeable
- Appropriate wage decision based on project location (county)
  - Multiple counties - higher decision prevails based on classification
- Contains collectively bargained rates and non-collectively bargained rates
  - Status of Contractor irrelevant
- Contract wage decision effective for duration of project
  - Modified periodically
  - Be sure to include the appropriate wage decision at the time of ad.
- 10 days prior to bid opening will require a revision under ad if a revision was done to your county





# Wage Decisions

- Five columns
  - 4 digit code
  - Classification
  - Basic hourly rate
  - Fringe benefit rate
    - If expressed as a percentage, percent is multiplied by basic hourly rate and added to fringe benefit rate
  - Last modification of wage decision

Code	Classification	Basic Hourly Rate	Fringe Benefit	Modifications						
1000	Electrician (Clear Creek county)	\$26.42	\$8.68+4.75%	<table border="1"> <thead> <tr> <th>MOD #</th> <th>Date</th> <th>Page #</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1/24/14</td> <td>1</td> </tr> </tbody> </table>	MOD #	Date	Page #	1	1/24/14	1
MOD #	Date	Page #								
1	1/24/14	1								
To calculate the total fringe benefit: $\$26.42 \times 4.75\% (.0475) = \$1.26$ Total fringe benefit: $\$8.68 + \$1.26 = \$9.94$ Total wage: $\$26.42 + \$9.94 = \$36.36$										



## Wage Decisions

### Covered Workers

- Crane operators
- Concrete pump operators
- Laborers/mechanics
- Flaggers
- TCS
  - Multiple classifications
- Specialty work
  - If manual in nature

### Non-covered Workers

- Profilometer operators
- Ticket takers
- Testers
- Erosion control supervisors
- Salaried supervisors
- CDOT Engineers





## Wage Decisions

- Must be posted in a prominent and accessible place
  - With other posters and notices
- Split classifications must be tracked/documentated
  - Highest wage for all hours may be paid
- Direct questions on classifications to RCRO's or Contract/Labor Compliance Manager



## Wage Decisions

- Classification (work) not on wage decision
  - Not on the wage decision = wage conformance
- Workers must be paid the wages of the classification in which they work
  - No “forcing” someone into a classification
- Conformance issues by project
  - No 4 digit code assigned
- Classification is utilized in the area by the construction industry
- Bear a reasonable relationship to the wage rates contained on the wage decision
- Approved by CDOT and submitted
- Final approval by USDOL



# Request for Authorization of Additional Classification and Rate (Conformance Request)

## US DOL SF 1444

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE			CHECK APPROPRIATE BOX		AUTHORIZED FOR LOCAL REPRODUCTION	
			<input type="checkbox"/> SERVICE CONTRACT	OMB No.: 9000-0089		
			<input type="checkbox"/> CONSTRUCTION CONTRACT	Expires: 04/30/2005		
Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.						
INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.						
1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210			2. FROM: (REPORTING OFFICE)			
3. CONTRACTOR					4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SCA ONLY)		
10. SUBCONTRACTOR (IF ANY)						
11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)						
12. LOCATION (CITY, COUNTY AND STATE)						
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION.						
NUMBER:			DATED:			
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY)			b. WAGE RATE(S)		c. FRINGE BENEFITS PAYMENTS	
<i>(Use reverse or attach additional sheets, if necessary)</i>						
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)			15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE			
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE			TITLE		CHECK APPROPRIATE BOX REFERRING TO BLOCK 13: <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE	
TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))						
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.						
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. A AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.						
<i>(Send copies 1, 2, and 3 to Department of Labor)</i>						
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE			TITLE AND COMMERCIAL TELEPHONE NO.		DATE SUBMITTED	
PREVIOUS EDITION IS USABLE			STANDARD FORM 1444 (REV. 12-2001) Prescribed by GSA-FAR (48 CFR) 53.222(f)			



## CDOT's Certified Payroll Statements

- Weekly submission (7 day workweek)
- CDOT Form 118 now within LCPtracker
  - Compliance statement will be signed electronically by whomever is submitting payroll.
  - LCPtracker also requires delineation of fringe benefits through the Contractor Fringe Benefit Statement.
- Owners/salaried employees working within a labor / mechanic classification should be shown on the payroll. Owner operators who are working on site must be shown on the payroll must provide documentation of license and registration and hours worked.





## CONTRACTOR FRINGE BENEFIT STATEMENT

# Contractor Fringe Benefit Statement

# CFBS

<b>PROJECT NAME:</b>	<b>PROJECT NUMBER:</b>	<b>COUNTY/LOCATION:</b>
I-70 Express Lane	12345	Clear Creek County, Summit County
<b>DATE:</b>		
<b>CONTRACTOR:</b>		<b>ADDRESS:</b>
123 Construction		123 Main Street, Denver, CO 80222
<b>Submitted by:</b>		<b>Title:</b>
Suzie Q		Payroll Administrator

Enter the hourly fringe benefit rate for the classification and employees below.

During the life of the project, if there are any changes in rates to any of the classifications an updated version of this document must be submitted for those classifications.

<b>CLASSIFICATION:</b>		<b>EFFECTIVE DATE:</b>	<b>SUBSISTENCE OR TRAVEL PAY:</b>	
Carpenter		4/7/2016		
<b>Fringe Benefits</b>	<b>Medical</b>	Paid To:	<b>Name:</b>	Approved Benefits Plan
	\$4.25 Hourly		<b>Address:</b>	456 Grand Avenue, Denver, CO 80222
	<b>Dental</b>	Paid To:	<b>Name:</b>	
	\$4.25 Hourly		<b>Address:</b>	
	<b>Pension</b>	Paid To:	<b>Name:</b>	
	\$0.25 Hourly		<b>Address:</b>	
	<b>Vacation/ Holiday Dues</b>	Paid To:	<b>Name:</b>	
	\$1.00 Hourly		<b>Address:</b>	
	<b>Training</b>	Paid To:	<b>Name:</b>	
	Hourly		<b>Address:</b>	
<b>Other</b>	Paid To:	<b>Name:</b>		
Hourly		<b>Address:</b>		
<b>Fringes Paid as Cash to Employee</b>	Paid To:	Employee		
Hourly				
<b>Total Fringe Benefits</b>				
\$9.75	Hourly			

**EMPLOYEE NAMES:** (please separate each name by comma or semicolon)



## Fringe Benefits

- Required in the amounts listed in wage decision
- Please note: If you decide to do away with the fringe and simply pay a higher base rate, this becomes the new base, with the 1.5 OT rate being multiplied at this rate.
- Cash, bona fide plans, funds and/or programs or in combination
  - Usual fringe benefits: insurance, pension plans, vacation, sick pay, holiday pay
- Must be paid for all hours worked
  - No overtime calculation for fringe benefit





## Fringe Benefits

- Must be expressed in a dollar amount per hour (CFBS)
  - Yearly contribution divided by 2080 hours
  - Monthly contribution, x 12, divided by 2080
  - Weekly contribution, x52, divided by 2080
- Must be spread over all hours worked (DB and non-DB) for workweek and through year
- Information of fringe benefits must be provided in writing to employees before deduction is made
- No credit for benefits required by law (29 CFR 5.29(f))
  - Social security
  - Workman compensation
  - Affordable Care Act (ACA) Fees





## Deductions

- Deductions are similar in LCPtracker.
- Must be identified and legally allowable
  - Taxes
  - Fringe benefits
  - May be allowed under FLSA, but could be unfeasible under DBRA (deposits, PPE, tools)
  - Union Dues
  - Garnishments and/or Child Support
    - Requires documentation
  - Cash advances on wages
    - Requires documentation
- Other deductions not listed must benefit employee





## Overtime

- CWHSSA, FLSA
- Must be paid at 1.5 times the base wage
- Required for all hours over 40 hours in a work week
  - Not limited to project (DBRA) hours





## Site of Work

29 CFR 5.2

Site of work is 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 part of the site of the 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.”**



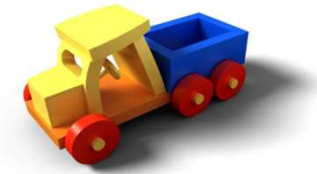
## Site of Work

- Two prong test
  - Dedicated exclusively or nearly so AND
  - Adjacent or virtually adjacent
- USDOL position is that site of work determinations will be made on a case by case basis and no arbitrary mileage will be given.





## Truck Drivers

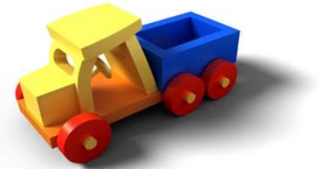


- Received guidance from FHWA
  - Can have a subcontract or a service contract
  - Either way, the provisions of the 1273 are in place and binding.
    - FHWA 1273 should be attached.
- Form 205 (in B2G) is required for all.



## Truck Drivers

- Are covered by Davis-Bacon in the following circumstances:
  - Time spent working on the site of work
  - Loading and/or unloading of materials and supplies, if not *deminimis*
  - Delivery of material or supplies between a facility that is part of the site of work and the actual construction site
  - 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.

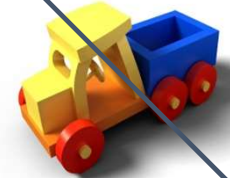




## Truck Drivers

Are not covered by Davis-Bacon in the following circumstances:

- Material delivery truck drivers while off “the site of work”
- 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”
- Truck drivers whose time spent on the site of the work is *deminimus*, such as only a few minutes at a time merely to pick up or drop off materials or supplies.





## Owner / Operators of Trucks

- USDOL's enforcement position
  - Must be bona fide owners
    - Own and drive truck
  - Applies only to truck
  - Certified payrolls must include:
    - Names of owner
    - Notation "owner/operator"
    - **Money, not hours**
  - Registration & driver's license needed for documentation
- CDOT Form 205 is submitted
- Prime or upper tier enters this information in LCPtracker.





## Contractor's Payroll Records

- Requirements
  - Full name
  - Address
  - Social security number
  - Correct classification(s)
  - Hourly rate of pay, including fringe benefits
  - Daily hours
  - Weekly hours
  - Deductions
  - Wages paid
- 
- Biggest Change: LCPtracker holds this information!







## Prime Contractor's Payroll Checking Requirements

- Check all payrolls submitted from subcontractors and from prime prior to submission to CDOT.
- Electronically sign that their own payroll was checked and wages and classifications shown are **reasonable** and correct.
- Submit subcontractor's and its own payroll to CDOT's Project Engineer. (Approval automatically unlocks for CDOT's acceptance.)
- Operating CDOT Project Engineer will be checking all payrolls through LCPtracker.





## Contractor's Payroll Checking Requirements

- Specification 107.01 (May 2, 2013)
  - CONSTRUCTION BULLETIN 2013 NUMBER 3
- Prime contractors are responsible for wages on project
  - Prime contractor is now responsible for checking/signing of all payrolls saying they are reasonable.



## CDOT Engineer Payroll Procedures

- CDOT checks prime-approved payrolls for reasonableness.
- There are methods to accept or reject the contractor's payrolls. If rejecting, the engineer **MUST** give reason. This message must be passed on from the prime to the sub.
- In the event of a rejected payroll, the prime is the one must change status to rejected - even for own payroll.





## Employee Interviews

- Required by 29 CFR 5.5 Contractors/subcontractors must allow you to interview employees during working hours
- Applies to state, local agency, and maintenance projects even if exempt from labor standards
- Number of interviews determined by awarded contract dollars
  - Monthly requirement - could be zero if project is shut down or all employees interviewed
- Quarterly report submission to RCRM
- Compare information to specific payroll
- The site interview feature within LCPtracker is currently being tested before implementation. We are looking for volunteers to use this feature and provide feedback on functionality.





## Number of Employee Interviews

### Contract Amount Interviews Required

- 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
- Greater than \$300 million
  - 20 interviews during each month of active construction



## Compliance / Certified Payroll Requirements



Mónica C. Vialpando, HQ  
Contract / Labor Compliance / OJT  
[monica.vialpando@state.co.us](mailto:monica.vialpando@state.co.us)  
720-668-0367



## ESB Contact Information

Erica Downey, Small Business Programs  
Civil Rights & Business Resource Center  
[erica.downey@state.co.us](mailto:erica.downey@state.co.us)  
303-512-4144

Region Civil Rights Managers



## Title VI and Title VII Information

Eboni Younger-Riehl,  
Civil Rights & Business Resource Center  
[erica.riehl@state.co.us](mailto:erica.riehl@state.co.us)  
303-512-4144





## Contact Information for ADA

Greg Martinez  
ADA Title II Analyst  
[greg.martinez@state.co.us](mailto:greg.martinez@state.co.us)  
303-512-4142





## Region Civil Rights Managers

- Region 1
  - Kathy Williams
  - [Kathy.williams@state.co.us](mailto:Kathy.williams@state.co.us)
    - 303-757-9386
- Region 2
  - Sabrina Hicks
  - [Sabrina.hicks@state.co.us](mailto:Sabrina.hicks@state.co.us)
    - 719-546-5432
- Region 3
  - Karl Lehmann
  - [Karl.lehmann@state.co.us](mailto:Karl.lehmann@state.co.us)
    - 970-683-6211
- Region 4
  - Juliet Sheets
  - [Juliet.sheets@state.co.us](mailto:Juliet.sheets@state.co.us)
    - 970-350-2156
- Region 5
  - Jason Benally
  - [Jason.benally@state.co.us](mailto:Jason.benally@state.co.us)
    - 970-385-1403

*Danke!*

Gracias

THANK  
YOU

Grazie

Merci