



# CDOT Contract Compliance Manual

September 2024

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.

Mónica Vialpando, Civil Rights Compliance Manager  
[monica.vialpando@state.co.us](mailto:monica.vialpando@state.co.us) | (720) 757-9540

Veronica Urbina, Civil Rights Analyst, Davis Bacon Payroll Support  
[veronica.urbina@state.co.us](mailto:veronica.urbina@state.co.us) | (303) 512-4144

The CRBRC works in collaboration with the **Regional Civil Rights Offices (RCROs)**, who oversee civil rights compliance during active construction.

**Region 1: Patricia Bowling, Regional Civil Rights Manager (Denver)**  
[patricia.bowling@state.co.us](mailto:patricia.bowling@state.co.us) | (303) 757-9386

**Region 2: Sara Rose, Regional Civil Rights Manager (Pueblo)**  
[sara.rose@state.co.us](mailto:sara.rose@state.co.us) | (719) 546-5432

**Region 3: Karl Lehmann, Regional Civil Rights Manager (Grand Junction)**  
[karl.lehmann@state.co.us](mailto:karl.lehmann@state.co.us) | (970) 683-6211

**Region 4: Juliet Sheets, Regional Civil Rights Manager (Greeley)**  
[juliet.sheets@state.co.us](mailto:juliet.sheets@state.co.us) | (970) 350-2156

**Region 5: Jason Benally, Regional Civil Rights Manager (Durango)**  
[jason.benally@state.co.us](mailto:jason.benally@state.co.us) | (970) 385-1403

# Table of Contents

Table of Contents	2
Section 1: Bidding Requirements	4
Prime Contractor Prequalification in B2GNow	4
Planning a Bid Using Wage Determination(s).....	5
Wage Determination(s) & Local Agency Projects.....	6
On-the-Job Training Goals.....	8
Small Business Requirements: DBE Goals.....	10
CDOT Form 1414: Anticipated DBE Participation Plan.....	13
Section 2: Award Process	14
DBE Utilization Plans.....	14
CDOT Form 1415: DBE Commitment Confirmation.....	16
CDOT Form 1416: Good Faith Effort Report.....	19
Section 3: Pre-Construction	21
FHWA 1273: Required Contract Provisions.....	21
B2GNow Account Creation.....	23
CDOT Form 205: Sublet Permit Application.....	25
CDOT Form 1425: Supplier Application Approval Request.....	28
Safety and Accident Prevention Plan.....	30
Workplace Violence Policy.....	32
Equal Employment Opportunity (EEO) Policy.....	33
Affirmative Action Plan.....	35
Nondiscrimination: Title VI of the Civil Rights Act of 1964.....	37
Section 4: Active Project Compliance	39
Required Bulletin Board Postings.....	39
Americans with Disabilities Act (ADA) Requirements.....	41
Contractor Compliance Reviews.....	43
FHWA 1391: Federal-Aid Highway Construction Contractors Annual EEO Report..	45
Prompt Payment to Subcontractors, Suppliers, and Rental Equipment Co.....	47
Prompt Payment Reporting via B2GNow.....	49

Monthly Prompt Payment Reports (B2G System Audits).....	52
On-the-Job Training (OJT) Program.....	54
CDOT Form 1415: Commitment Confirmation.....	57
CDOT Form 1420: DBE Plan Modification.....	59
CDOT Form 1416: Good Faith Effort Report.....	62
CDOT Form 1432: Commercially Useful Function Questionnaire.....	64
Release of Retainage.....	66
Project Close-Out.....	68

# Section 1: Bidding Requirements

## Prime Contractor Prequalification in B2GNow

### Who Must Prequalify?

Contractors must be prequalified prior to submitting a bid for a CDOT project. Only one prequalification is required per firm.

### Why is Prequalification Required?

Prequalification is the process of review by CDOT of a contractor's fiscal and workmanship qualifications to perform work on a CDOT project. The prequalification application must be completed in the CDOT B2GNow system.

### When is Prequalification Required

New applications shall be submitted 17 calendar days prior to the bid date. Prequalified firms must submit a new application online at least 17 calendar 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](#).

### FAQs

1. Is prequalification the same as having an account in B2GNow?

No. All contractors and suppliers working for CDOT must have an account in B2GNow. Only prime contractors must be prequalified.

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 at least 17 calendar days prior to the expiration to remain prequalified.

# Planning a Bid Using a Wage Determination(s)

## Wage Determination Overview

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

## Who is Impacted?

This information applies to all contractors and subcontractors on a CDOT project that are responsible for entering and certifying weekly payroll while actively working on the project. Contractors will want to consider whether prevailing wages are required for the proposed project.

## How do I Know Which Wage Determination(s) Is/Are Applicable?

As applicable, the wage determination(s) is attached to the plans and specifications for each project and applies to the duration of the project.

## Regulation/Rule/Specification

Paying prevailing wage is required by the [Federal Davis-Bacon Related Acts](#) and Senate Bill 19-196 and the associated Colorado House Bill 21-1056.

## FAQs

1. Where can I find out more information about wage determinations?

Detailed wage determination information is in CDOT's FAQs on Certified Payroll. Please check out CDOT's [FAQs Certified Payroll](#) for more information.

# Wage Determination(s) & Local Agency Projects

## Who is Impacted?

Contractors are impacted when they work on CDOT local agency (i.e. city and/or county) projects that have Davis Bacon and Related Acts (DBRA) requirements. Wage determinations also apply to all subcontractors who do work on the project.

## When Are Davis-Bacon Wages 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 on the project. If a FHWA-funded 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 Does CDOT Make the Determination?

CDOT personnel will confirm the applicability of Davis-Bacon and Related Acts requirements prior to the project going out to bid.

## Where Do I Find the Wage Determination(s)?

If Davis-Bacon wages apply, a wage determination will be attached to the contract's plans and specifications. Per the requirements of the Davis Bacon and Related Acts and the 29 CFR 5.5, the prime contractor and all upper-tier subcontractors shall include the applicable wage determination(s) in all lower-tier subcontracts. For assistance finding a wage determination, please contact the local agency engineer on the project.

## Regulation/Rule/Specification

[Davis-Bacon and Related Acts FAQ](#)

## FAQs

1. When do Davis-Bacon and Related Acts rules apply?

Davis-Bacon and Related Acts regulations 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 (D-B) wages.

2. What funding streams require Davis-Bacon wages?

There could be a few types of funding that require Davis-Bacon wages. For local agencies as an example, any FHWA funding will require Davis-Bacon wages. Some of the sources of FHWA funding requiring D-B are TAP funds, emergency funds, and Safe Routes to Schools. There are many other types of these different funding sources.

3. What about the Colorado state requirement (HB 24-92-102) for Davis-Bacon wages? Isn't a local agency held to the same standard as CDOT's projects -- something that requires local agency projects to pay prevailing wage?

When the [Senate Bill 19-196](#) became a Colorado law, it outlined as part of Part 2 (Prevailing Wage for Public Projects) that the term "Agency of Government" did NOT include any county, city and county, city, municipality, town, etc. Therefore, local projects with only local and/or state funding in the construction component do NOT require D-B wages.



# On-the-Job Training Goals

## Who is Impacted?

All FHWA-funded projects are evaluated for an On-the-Job (OJT) contract goal. Accordingly, all prime contractors are impacted in that they are responsible for meeting the applicable contract OJT goal.

## Why is OJT Required?

CDOT's OJT Project Special Provision and Standard Special Provision are implementations 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 Does CDOT Set the OJT Goal & Where to Find It

CDOT evaluates each contract for an OJT 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. The OJT contract goal can be found in the On the Job Training Contract Goal Project Special Provision. The OJT requirements for the contract are outlined in the On the Job Training Standard Special Provision within the contract's specification package.

## Regulation/Rule/Specification

OJT is a federal requirement contained in [23 CFR Part 230, Appendix B to Subpart A](#).

## FAQs

### 1. Do all projects have an OJT goal?

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

### 2. What happens if the training hours achieved fall short of the OJT goal?

If the training hours achieved fall short of the OJT goal, the prime contractor may be subject to a financial disincentive. See the CDOT On the Job Training Standard Special Provision for more information.

3. What are the types of OJT plans that can be used toward the OJT contract goal?

There are three options for contractor OJT plans:

- CDOT's pre-approved classifications utilization program (PAC-UP)
- A registered U.S. Department of Labor training or apprenticeship program
- Approved programs through other groups like Colorado Contractors Association (CCA), Western Colorado Contractors Association (WCCA), and/or other workforce centers

# 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.

## Who is Impacted?

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

## Why is DBE Required?

49 CFR Part 26 may require the setting of DBE goals on federally funded contracts. As a 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 that is expected from disadvantaged firms, absent the effects of discrimination. Goals are set by region civil rights staff based on 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.

## Regulation/Rule/Specification

This federal requirement is contained in [49 CFR Part 26](#).

## FAQs

1. Which firms count toward DBE goals?

Only firms that are certified as DBEs and listed as such in the Colorado Unified Certification Program (UCP) DBE directory may count for DBE credit. The Colorado UCP may certify DBE candidates in their applicable North American Industry Classification System (NAICS) code.

CDOT uses NAICS codes and index descriptors to describe each type of work performed by the DBE. While a DBE is allowed to perform any work listed on an approved CDOT Form 205, only the types of work for which a firm is certified can count toward the DBE goal.

2. How can a bidder tell if a firm is DBE certified?

All certified DBE firms are listed on the [Colorado DBE Directory](#).

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 should a bidder focus on the DBE goal?

Prior to bidding and throughout the contract. CDOT needs to verify sufficient commitments or other good faith efforts to meet the goal prior to contract award. The prime contractor must ensure dollar commitments are kept and project goals are met throughout the contract, or the prime shall make sufficient good faith efforts in that regard.

5. Does a 0% goal mean the project is not federally funded or that DBEs cannot be used?

No. A 0% goal means there was not sufficient DBE availability or enough subcontracting opportunities to justify mandated DBE participation. On FHWA-funded contracts with a 0% goal, CDOT's typical contract requirements apply, and 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 DBE contract goal?

Any participation achieved in excess of the goal, without any commitment made, is considered race-neutral participation. Race-neutral participation is achievable whether or not your firm has made a commitment to use a particular DBE. Race-neutral participation

(that participation that is garnered outside a commitment to use a particular DBE) can assist the prime contractor should the need arise to add DBE participation to meet the DBE contract goal.

7. What happens if a 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 CDOT 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 and is certification guaranteed?

A firm can follow the steps outlined in the DBE application process within [CDOT's DBE Certification Eligibility website to apply for DBE certification.](#) Certification is not guaranteed.

# **CDOT Form 1414: Anticipated DBE Participation Plan**

## **CDOT Form 1414 Overview**

The CDOT Form 1414 is a document that confirms the anticipated participation plan for DBEs that are going to be working on the contract. Prime contractors that are bidding on a CDOT contract with a DBE goal must submit the CDOT Form 1414 as part of the bid package. If the apparent low responsible bidder has not obtained any Commitments or if the contract goal is 0% and the apparent low responsible bidder is electing not to make voluntary commitments, they shall still submit the CDOT Form 1414 documenting zero anticipated participation.

## **Who is Impacted?**

All prime contractors bidding on FHWA-funded contracts that include a DBE goal (including a 0% goal) need to be aware of the requirement to submit the proper forms, including the CDOT Form 1414.

## **Why is the CDOT Form 1414 Required?**

The 49 CFR Part 26 may require the setting of DBE goals on federally funded contracts. The Anticipated DBE Participation Plan, CDOT Form 1414, is the method in which the bidder documents commitments to meet the contract goal.

## **What are the CDOT Form 1414 Requirements?**

All bidders shall submit a CDOT Form 1414 listing commitments obtained from DBEs, with their proposal, even if such commitments do not meet the contract goal (for additional information on submitting a good faith effort, see the [CDOT Form 1416: Good Faith Effort Report](#) in this section. If the apparent low responsible bidder has not obtained any commitments or if the contract goal is 0% and the apparent low bidder is electing to not make voluntary commitments, they shall still submit the CDOT Form 1414 documenting zero anticipated participation.

## **What happens if the CDOT Form 1414 is not Submitted with the Bid?**

Failure to submit a signed CDOT Form 1414 shall result in rejection of the proposal and apparent low responsible bidder deemed non-responsive.

# Section 2: Award Process

## DBE Utilization Plans

### DBE Utilization Plan Overview

A utilization plan (UP) is a complete 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 are DBE Utilization Plans Required?

Federal regulations require that CDOT make contract awards conditional on the bidder's ability to meet or make a 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 to meet the DBE contract goal. The bidder's utilization plan must be approved by the Civil Rights & Business Resource Center (CRBRC) 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](#). Utilization Plans are reviewed and approved 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](#).

CDOT's DBE contract requirements are found in [CDOT's DBE Special Standard Provision](#).

### FAQs

1. What does CDOT look for in the utilization plan?

CDOT checks to make sure that (1) the bidder has made sufficient commitments to meet the DBE goal and (2) the bidder is utilizing firms that are DBE certified in those areas that they

are claiming DBE participation in order to perform and count (toward the project goal) the contracted work 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 bidder will have two business days to amend the utilization plan (CDOT Form 1414) and return it to CDOT with modifications to its comments. If the total eligible participation on the amended commitments does not meet the contract goal, the bidder shall complete a good faith effort review before the project can be awarded. The bidder should submit a completed CDOT Form 1416 and provide documentation of their good faith efforts if their eligible participation does not meet the goal after amendment.

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 CDOT Form 1414. Each DBE firm listed must also have a signed and complete CDOT Form 1415, confirming their participation on the project. Once the plan has been reviewed, the CDOT will reject, return, or approve the plan. The bidder 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 bidder 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).

5. How does the bidder get additional information on how to submit the utilization plan?

See the CDOT Process Guide 3-6 Complete Utilization Plan in B2GNow (Bidder)



# **CDOT Form 1415: DBE Commitment Confirmation**

## **CDOT Form 1415 Overview**

The CDOT Form 1415 is a document that confirms the bidder's commitments (pre-award). The commitment is a portion of the contract, identified by dollar amount and work area for participation by a particular DBE. This form is a binding contractual agreement between the bidder and CDOT. The form is not a binding agreement between the bidder 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 FHWA-funded contracts. The CDOT Form 1415 must be completed by each DBE certified subcontractor that the bidder commits to use over the course of the contract. The total amount committed across all CDOT Form 1415s must meet the overall DBE goal, unless otherwise approved by CDOT. This form is also used when a DBE commitment is required post-award.

Sections A and B of the form shall be completed and signed by the bidder/prime contractor and Section C of the form must be completed and signed by the DBE-certified subcontractor or supplier. 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 CDOT Form 1415**

The CDOT Form 1415 is a DBE firm's written confirmation of its participation on a contract. For applicable contracts with DBE requirements, federal regulations require that as part of its bid submission, bidders provide written confirmation from each committed DBE of its participation on the contract identified by dollar amount and work area.

## **When and Where to Submit the CDOT Form 1415**

Bidders shall submit all CDOT Form 1415s with the utilization plan within five days of being selected as low apparent bidder via [B2GNow](#). 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 CDOT Form 1415 can be found in the [DBE Special Standard Provision](#) located within the most recent year's construction specifications - Standard Special Provisions- Revisions to Miscellaneous section.

## FAQs

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

The total amount committed across all CDOT Form 1415s must match the commitments listed on the CDOT 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 bidder is able to show that it made good faith efforts to meet the goal, despite falling short. The bidder may commit to DBE participation beyond the required goal. However, every DBE commitment made becomes binding on the low apparent bidder, even if the total overall DBE participation on the contract goes beyond the DBE goal.

2. Does the bidder 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 perform a particular job, whereas commitments are an agreement between the bidder/prime contractor and CDOT to attain a certain level of DBE participation from an identified firm. The two agreements are entirely unrelated. The prime contractor is only required to commit to a particular DBE firm (or combination of firms) up to the DBE goal, however a subcontract may be greater than the commitment amount.

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

The CDOT Form 205 and subcontract amount shall at least equal the amount listed on the CDOT Form 1415.

4. How are commitments beyond the DBE goal enforced?

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

5. If this form creates an agreement between the bidder and CDOT, why does the DBE firm need to sign it?

The DBE is required to sign the CDOT Form 1415 to acknowledge that the bidder is making a commitment to contract with them on the project and that they can perform the expected work. DBE firms 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 DBE's participation that can count toward the project's DBE goal.

6. What if the prime contractor needs to replace a DBE subcontractor?

The utilization of a DBE firm that is listed on the bidder'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, the Region Civil Rights Office should be contracted. DBE firms that are participating on the contract without a CDOT Form 1415 may be replaced in the same manner as any other subcontractor.

7. How does the bidder get additional information on how to complete a CDOT Form 1415?

See the CDOT Process Guide 3-3 Complete CDOT Form 1415 (Bidder) and CDOT Process Guide 3-4 Complete CDOT Form 1415 (DBE)

# CDOT Form 1416: Good Faith Effort Report

## CDOT Form 1416 Overview

The CDOT Form 1416 and supporting documentation is the method that a bidder will use to document and communicate the actions and good faith efforts they have made in meeting 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 CDOT Form 1416

The CDOT Form 1416 and supporting documentation details the actions taken to meet the contract DBE goal. Federal regulations require CDOT make contract awards conditional on the bidder's good faith effort to meet DBE contract goals. This form, along with all supporting documentation, details and documents the low apparent bidder's good faith efforts to meet the DBE contract goal.

## When and Where to Submit the CDOT Form 1416

Bidders shall submit the CDOT Form 1416 with its utilization plan via [B2GNow](#).

## Regulation/Rule/Specification

CDOT's rule regarding CDOT Form 1416 can be found in the [DBE Special Standard Provision](#).

## FAQs

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

In terms of 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?

In the good faith effort determination, CDOT considers the number and variety of the bidder's solicitation attempts, how diligently the bidder worked to identify subcontracting opportunities, and the number and variety of work codes the bidder searched for.

3. Where can the bidder find additional guidance and examples of good faith efforts?

[Compliance Deep Dive: Good Faith Efforts](#)

4. How does the bidder get additional information on how to complete a CDOT Form 1416?

See the CDOT Process Guide 3-5 Complete CDOT Form 1416 (Bidder)

# Section 3: Pre-Construction

## 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 FHWA-funded projects. On federal-aid projects, the FHWA 1273 is required to be physically incorporated in the prime contract and every subcontract.

### Who is Impacted?

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

### Why the FHWA 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 FHWA 1273

The FHWA 1273 must be physically incorporated into all subcontracts and incorporated by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or service.

### Regulation/Rule/Specification

[23 CFR 633.102](#)

### FAQs

1. What happens if a contractor does not physically 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 must be proactive and work with CDOT to come into compliance. If the FHWA 1273 is not physically incorporated into the 1st tier subcontracts or included by reference for work done under any purchase orders, rental agreements, and other agreements for supplies or service, the prime contractor should initiate a non-monetary change order to correct the issue. If the lower-tier subcontractor is out of compliance, it is the responsibility of the prime contractor to ensure that the upper-tier subcontractors remedies the situation.

# B2GNow Account Creation

## Who Must Create an Account

All contracting firms (including subcontractors, suppliers, consultants, and rental equipment companies) must create an account in the B2GNow system before being approved to work on a CDOT contract. Firms may have multiple users associated with the firm's account.

## Why Account Creation is Required

CDOT uses the B2GNow system to monitor DBE participation and prompt payment compliance as well as gain written permission by CDOT to sublet, sell, transfer, assign or dispose of the Contract.

## Regulation/Rule/Specification

This is a CDOT rule. The use of B2G is written as a contract specification in Sections 106.01 and 108.01 of [CDOT's Standard Specifications for Road and Bridge Construction](#).

## Consequence of Not Having an Account

The failure to create an account in CDOT's B2GNow system will result in the contractor's CDOT Form 205 or CDOT Form 1425 being withheld, resulting in the firm not being allowed to start work on the project.

## FAQs

1. How can a contractor access B2GNow?

B2GNow can be accessed via the following link: <https://cdot.dbesystem.com/>

2. Will the prime contractor, subcontractors, or suppliers be financially responsible for paying for the B2GNow software system while working on a CDOT project?

No, the use of B2GNow for CDOT projects does not cost money for the prime contractors, subcontractors, suppliers, or rental equipment companies to use the system.

3. How can a contractor add a user to the account in B2GNow?



- Login to B2GNow
- Go Settings
- Click “Add New User”
- Complete the form

4. How can the contact person be changed for the audit on a project?

- Login to B2GNow
- Click “View”
- Select the “My Contracts”
- Click on the contract that you want to open
- Under the “User Assignment” section, select the name of the Compliance Contact Person from the drop-down menu to assign them as the primary or secondary compliance person.

# CDOT Form 205: Sublet Permit Application

## CDOT 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 complete and submit the CDOT Form 205 in B2GNow for all subcontractors on the project. The CDOT Form 205 shall be approved by CDOT prior to the subcontractor beginning work on the project.

## Why is the 205 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 essential component 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](#).

## 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 (or other work agreement) has been fully executed and the CDOT 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 a contractor find instructions on how to fill out the CDOT Form 205?

Instructions to complete the CDOT Form 205 can be found at the following link: [CDOT Form 205](#)

3. Do truckers need to submit a CDOT Form 205?

It depends. A trucker (including owner-operators) is considered a subcontractor when hired by a prime contractor or subcontractor, either as an employee or as an independent contractor, and as a result, a CDOT Form 205 is required. Please see the [CDOT Trucking Compliance Resource Guide 2024](#) 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, if a subcontractor has a lower-tier subcontractor, the prime contractor shall provide the CDOT Form 205 to the upper-tier subcontractor for completion. Once completed, the upper-tier subcontractor shall provide the form to the prime contractor for the prime's submission into B2GNow.

6. If a subcontractor performs work for two different contractors on the same job, is a separate CDOT Form 205 required?

Yes, a CDOT Form 205 is required for the work under each contractor because the CDOT Form 205 is associated with separate subcontracts.

7. How does the prime contractor submit the CDOT Form 205 into B2GNow for approval?

There are many process guides available to assist the prime contractor with the CDOT 205 submission process. Please see the following CDOT process guides:

- 8-1 Confirm Account Creation in B2GNow (Prime/Sub)
- 8-2 Determine if Company will be Performing as a Subcontractor (Form 205) or Supplier (Form 1425) (Prime)
- 8-3 Complete CDOT Form 205 or CDOT Form 1425 and Submit in B2G (Prime)

# CDOT Form 1425: Supplier Application Approval Request

## Form 1425 Overview

The CDOT Form 1425: Supplier Application Approval Request is required when a prime contractor or subcontractor makes an agreement with a supplier or rental equipment company in which the written agreement exceeds \$10,000.

## Who is Impacted?

Prime contractors are required to complete and submit the CDOT Form 1425 in B2GNow for all suppliers and rental equipment companies on the project. If the supplier is contracted with a lower-tier subcontractor, the applicable subcontractor must complete these forms and submit them to the prime contractor for submission. The CDOT Form 1425 shall be submitted for approval to CDOT at such time that the \$10,000 amount is known to be exceeded and/or before the following occurs on the contract:

- the supplier's upper tier begins work, or
- rental equipment is being used, or
- incorporating materials into the contract

## FAQs

1. Where can a contractor find instructions on how to fill out the CDOT Form 1425?

Instructions to fill out the CDOT Form 1425 can be found at the following link [CDOT Form 1425](#)

8. Do truckers need to submit a CDOT Form 1425?

It depends. A trucker (including owner-operators) is considered a supplier when working for/hired by a material supplier, either as an employee or as an independent contractor and as a result, a CDOT Form 1425 is required if the written agreement exceeds \$10,000. The other component for a truck driver to be considered a material supplier is that their only obligation is the delivery of materials. Please see the CDOT Trucking Compliance Resource Guide 2024 for more information on trucking requirements.

9. If a supplier provides material to two different contractors on the same job, is a separate CDOT Form 1425 required?

Yes, a separate CDOT Form 1425 will be required for the supplies under each contractor because the CDOT Form 1425 is associated with each distinct agreement(s).

10. How does the prime contractor submit the CDOT Form 1425 into B2GNow for approval?

There are many process guides available to assist the prime contractor with the CDOT 1425 submission process. Please see the following CDOT process guides:

- 8-1 Confirm Account Creation in B2GNow (Prime/Sub)
- 8-2 Determine if Company will be Performing as a Subcontractor (Form 205) or Supplier (Form 1425) (Prime)
- 8-3 Complete CDOT Form 205 or CDOT Form 1425 and Submit in B2G (Prime)

# Safety and Accident Prevention Plan

## Plan Overview

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

## 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 each project.

## Plan Requirements

1. The name of the Project Safety Manager and his/ her 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.

## **FAQs**

1. Is there an example of a project Safety and Accident Prevention Plan?

Yes, here is an example of the [Project Safety Management Plan](#).

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](#) 101.02, and the policy about sanctions and/or removal of a worker who demonstrates such behavior is found in 108.07.

## 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, most 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 plan

[Equal Employment Opportunity \(EEO\) Counseling Program](#)

FHWA 1273, Section II, Nondiscrimination

[Required Contract Provisions Federal-Aid Construction Contracts](#)

[41 CFR § 60-1.420](#)

## 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 supervisory and personnel office employees before the start of work and then no less often than once every six months. The company's EEO policy and the procedures to implement such policy are brought to the attention of all employees by means of meetings, employee handbooks, or other appropriate means. A dated agenda with minutes that were reviewed as well as a roster of attendees must be retained to comply.

# 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 is the Plan Required?

An affirmative action plan is required for all contractors on federally assisted projects with a contract or subcontract more than \$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.

[E.O. 11246](#) requires federal contractors and federal-aid contractors to take steps to ensure affirmative action.

### **FAQs**

1. Is 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 timetables and goals.

# 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 at [dot\\_civilrights@state.co.us](mailto:dot_civilrights@state.co.us) .Regulation/Rule/Specification

The regulations contained in [49 CFR, Title 49, Subtitle A, Part 21](#) prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

## 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](#).

### 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.

# Section 4: Active Project Compliance

## Required Bulletin Board Postings

### Program Overview

Job sites must have a bulletin board containing the EEO policy, wage determination(s), and other posters that are required by state and 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 Posters for Jobsite Bulletin Boards](#).

### Regulation/Rule/Specification

DOL guidance on [Workplace Posters](#).

CDLE guidance on [Posters](#).

FHWA requirements on [Job site Posters](#).

### FAQs

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

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



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.

4. Is the wage conformance, issued by the DOL, required to be posted on the project bulletin board?

Yes, the wage conformance letter, issued by the DOL, is required to be posted.

# Americans with Disabilities Act (ADA) Requirements

## Program Overview

The ADA is a law that prohibits discrimination based on 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.

[ADA Employment \(Title I\)](#). Disability discrimination occurs when an employer or other entity treats a qualified individual with a disability who is an employee or applicant unfavorably because they have a disability.

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: [EEOC Disability-Related Resources](#).

[Title II 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 Accessibility Program](#) website for more information

### **Regulation/Rule/Specification**

Although the [FHWA 1273](#) was most recently revised in 2023, the regulation for Title II requirements really came into play 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. [ADA Guidance & Resource Materials](#).

# 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 per contractor.

## Regulation/Rule/Specification

The requirement to conduct contract compliance reviews is outlined in [23 CFR 230](#), CCR Requirements.

## 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.

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 of 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 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.

5. Can a subcontractor be chosen for a review?

The short answer is yes, they can. While it is often the prime contractor that is chosen, subcontractors can absolutely be evaluated for contract requirements.

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

## **FHWA 1391 Form Overview**

The FHWA Annual Equal Employment Opportunity (EEO) Report is required for all FHWA-funded construction contracts. The FHWA-1391 report effectively summarizes a contractor's project labor force for the last full pay period ending in July. The Annual EEO Report collects employment data, specifically highlighting employment of racial/ethnic minorities and women, from all construction contractors.

### **Who is Impacted?**

All contractors and subcontractors (regardless of tier) on active CDOT Federal-Aid Highway construction projects valued at \$10,000 or greater during the final full pay period of July must submit workforce employment information within LCPtracker.

### **What is Required?**

For all federal-aid projects let by CDOT, contractors and subcontractors will submit their EEO reporting information via LCPtracker. For ALL CDOT projects let by local agencies outside of the city and county of Denver, they will also submit all 1391 data via LCPtracker just like all other projects.

### **Regulation/Rule/Specification**

[23 CFR, Appendix C to Subpart A of Part 230](#)

### **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. 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.

3. 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. Organizations performing only professional services and no onsite labor do not need to complete the FHWA 1391 Report.

4. Where can contractors find directions for the FHWA 1391?

Contractors can find directions for the FHWA 1391 on this CDOT [website](#).

# Prompt Payment to Subcontractors, Suppliers, and Rental Equipment Companies

## 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](#). The State of Colorado prompt payment requirements can be found at [CRS 24-91-103](#).

CDOT's rule is included in Section 109.06 of the [Contract Specification](#).

## FAQs

1. What if the prime contractor has good cause to withhold the subcontractor's or supplier's payment?

If the prime contractor has good cause to withhold a progress payment, the prime contractor must notify the subcontractor/supplier 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). The good cause notice should be uploaded in B2GNow with the month's audit that payment is withheld.

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 audit period.

## 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. For several years, the online system B2GNow has replaced CDOT Forms 1418 and 1419. Prime contractors must report all payments received from CDOT and paid to first-tier subcontractors, suppliers, and rental equipment companies. Every lower tier firm must confirm, or dispute reported payments from higher tiers, report any withheld retainage, and report any payments to lower tier firms. 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 payments made by the 15<sup>th</sup> of the month 2) Payment confirmations must be completed by subcontractors, suppliers, and rental equipment companies 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](#).

CDOT's rule is included in Section 109.06 of the [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 has a subcontract or written agreement with lower tier firms.

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

The prime contractor 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 tier firms. The audit will remain open until all 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 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 in the “Payment Date” field and include all payment dates made for the audit period in the “Payment Detail” section.

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 due to 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 canceled 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 good cause notice 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 must 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 day 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 2024 is generated on November 1, 2024, and is requesting information about money paid in and out in the month of October. Most likely, these payments reflect amounts from the September Pay Estimate and September invoices.

### 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 day 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 2024 is generated and released to the prime contractor and sub-prime contractors on November 1, 2024, 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.

For detailed information on how to report payments in B2GNow, see Process Guide 9-1 Reporting Payments in B2GNow

### Confirming or Disputing Payment

Within 15 days of receiving notice from CDOT Civil Rights that the prime has reported, subcontractors/suppliers shall login to the system to confirm payment. For detailed information on how to respond to an audit, see Accessing the Audit above for help getting to this step.

## **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/supplier who reported a discrepancy will be notified of the issue. All parties should login to the system to investigate and respond to 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.

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 to confirm the information that has been provided. If the discrepancy is between a subprime contractor and a lower tier subcontractor, 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. For detailed information on how to resolve a discrepancy in B2GNow, see Process Guide 9-3 Subcontractor or Supplier Attempt to Resolve Issue with Higher-Tier.

# 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 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 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. This form requires approval from the Region Civil Rights Office.
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 CDOT project engineer/project manager for approval.

## What is the Required Documentation?

The 1337, the 838, and the 832 should all be sent to the CDOT project engineer/project manager. CDOT also needs a copy of either the approved training plan 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](#).

## FAQs

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

First and foremost, please begin talking with the CDOT project engineer/project manager and the CDOT Region Civil Rights Office early. If the OJT goal is not met and good faith efforts are not submitted and approved, 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 can pay at the outlined percentage of the base rate that each employee is guaranteed according to the plan document requirements or the collectively bargained agreement.

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 LCPtracker for the project, contact the Civil Rights Region Specialist.

5. Can the OJT hours of subcontractors count toward the OJT contract goal?

Yes, the OJT hours of subcontractors can count toward the OJT contract goal if approved. 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/project manager within seven calendar days, please follow up so action can be taken.

# CDOT Form 1415: Commitment Confirmation

## CDOT Form 1415 Overview

The CDOT Form 1415 is used in active project construction to document the Contractor's commitments to use specific DBE firms. A CDOT Form 1415 will be used by a Contractor to make a commitment to a DBE to perform work on the Contract as a result of a reduction, termination, or to obtain additional eligible participation due to a contract modification order.

## Who is Impacted?

All prime contractors working on FHWA-funded contracts that contain a DBE goal (including a 0% goal) need to be aware of the requirement to submit the proper forms, including the CDOT Form 1415 during construction.

## Why is the CDOT Form 1415 Required?

DBE regulations (49 CFR Part 26) require the evaluation of DBE goal setting on FHWA funded contracts. For those contracts in which there is a goal, a mandatory component of these regulations is the documentation of The Anticipated DBE Participation Plan, CDOT Form 1415, is the method in which the bidder/prime contractor documents commitments to meet the contract goal.

## Regulation/Rule/Specification

[CDOT DBE Standard Special Provisions](#)

## FAQs

1. How is the CDOT Form 1415 used to make a substitution for an approved termination or reduction for a DBE substitution?

If a DBE commitment is approved by CDOT due to good cause for a reduction or termination, the contractor is required to make good faith efforts to find another DBE to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the contract as the participation that was terminated, or reduced up to the contract goal. The CDOT Form 1415 can be used to make a substitution by:

- a. Making a new commitment to any unperformed work on the contract by providing a completed CDOT Form 1415 for each new DBE commitment;
  - b. Increasing the amount of an existing commitment for any unperformed work on the contract by submitting a revised CDOT Form 1415 for that commitment
- 2. How is the CDOT Form 1415 used when additional eligible participation is required to meet the contract goal due to an increased dollar amount on the contract (contract modification order was issued)?

The Contractor is required to make good faith efforts to obtain additional eligible participation sufficient to meet the contract goal on the total earnings amount. The Contractor may obtain additional eligible participation using a CDOT Form 1415 by:

- a. Making a new new commitment to any unperformed work on the contract by providing a completed CDOT Form 1415;
  - b. Increasing the amount of an existing commitment for any unperformed work on the contract by submitting a revised CDOT Form 1415 for that commitment

# CDOT Form 1420: DBE Plan Modification

## Form Overview

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

## Who is Impacted?

Prime contractors seeking to modify a commitment for a particular DBE firm.

## What is Required?

Commitments are formal, binding, contractual obligations from the prime contractor to CDOT to use specific DBE firms at outlined levels of participation. During the performance of the contract, the prime contractor shall use the CDOT Form 1420 to communicate all requests for termination, reduction, and/or substitution.

In the event of a termination or reduction, the prime contractor shall provide notice to the DBE firm and allow the firm five days to respond. After the five day submission period, the prime contractor shall submit to CDOT, for approval, the Form 1420 and the termination/reduction notice to the DBE. Additionally, any written responses from the DBE firm to the prime contractor must also be submitted to CDOT. For more information regarding utilization plan modifications, please review the CDOT DBE contract specification.

## Regulation/Rule/Specification

[CDOT DBE Standard Special Provisions](#)

## FAQs

1. What is considered a 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 must be approved beforehand by CDOT.

4. How is the CDOT Form 1420 used to make a substitution for an approved termination or reduction for a DBE substitution?

If a DBE commitment is approved by CDOT due to good cause for a reduction or termination, the contractor is required to make good faith efforts to find another DBE to substitute for the original DBE. The good faith efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the contract as the participation that was terminated, or reduced up to the contract goal. The CDOT Form 1420 can be used to make a substitution by:

- c. Utilizing any race-neutral eligible participation on the contract performed before the CDOT Form 1420 submission as part of good faith efforts made.
5. How is the CDOT Form 1420 used when additional eligible participation is required to meet the contract goal due to an increased dollar amount on the contract (contract modification order was issued)?

The prime contractor is required to make good faith efforts to obtain additional eligible participation sufficient to meet the contract goal on the total earnings amount. The prime contractor may obtain additional eligible participation using a CDOT Form 1420 by:

- c. Utilizing other eligible participation on the contract as part of good faith efforts.

## **Regulation/Rule/Specification**

[CDOT DBE Standard Special Provisions](#)

# CDOT Form 1416: Good Faith Effort Report

## Form Overview

The CDOT Form 1416, Good Faith Effort Report, is a document that details the actions taken to meet the contract goal.

## Who is Impacted?

Prime contractors seeking to submit a good faith effort report working on FHWA-funded contracts that include a DBE goal.

## What is Required?

The prime contractor shall fulfill DBE commitments unless the contractor obtains approval for termination, reduction, or substitution. When a commitment is terminated or reduced, the prime contractor shall make good faith efforts to find another DBE to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the contract as the participation that was terminated or reduced up to contract goal. If the amount of the contract increases during the performance of the contract, the prime contractor must make good faith efforts to obtain additional DBE participation to meet the contract goal.

## Regulation/Rule/Specification

[CDOT DBE Standard Special Provisions](#)

## FAQs

1. What is the process if the prime contractor has not obtained sufficient substitutions up to the contract goal after an approved reduction or termination?

The prime contractor shall submit evidence of good faith efforts to substitute via the CDOT Form 1416, Good Faith Efforts Report. The prime contractor shall have seven days from the submission date of the commitment modification request (CDOT Form 1420) to submit documentation of substitutions and/or CDOT Form 1416 evidencing good faith efforts to obtain sufficient substitutions despite failing to do so.

2. What is the process if the prime contractor determines that they are unable to obtain additional eligible participation sufficient to meet the contract goal on the total earnings amount following a contract modification order?

The prime contractor shall provide documentation of good faith efforts to obtain additional DBE participation by submitting a completed CDOT Form 1416, along with any supporting documentation. The CDOT Form 1416 must be submitted within a reasonable time of the prime contractor's initial determination that they will be unable to obtain additional eligible participation sufficient to meet the contract goal on the total earnings amount.

3. What is a good faith effort?

Good faith efforts should include, but are not limited to, reaching out to DBEs that could perform subcontracting opportunities on the contract, breaking out contract work items into economically feasible units (e.g., smaller tasks or quantities) to facilitate DBE participation even when the bidder/Contractor might otherwise self-perform these items, negotiating in good faith with DBEs and not refusing to utilize a DBE for price alone, and other efforts to obtain DBE participation on the Contract. For additional guidance on making Good Faith Efforts see 49 CFR Part 26 Appendix A.



# CDOT Form 1432: Commercially Useful Function Questionnaire

The CDOT Form 1432 is a form that records and verifies commercially useful function to count as eligible participation on contracts.

## Who is impacted?

Both prime contractors and DBE firms are impacted. A prime contractor cannot count the work performed and/or supplies provided by a DBE as eligible participation toward the contract goal if the CDOT Form 1432 has not been approved by CDOT. Certified DBE firms working for DBE credit cannot be counted without the submission and approval of a CDOT Form 1432.

## What is Required?

CDOT Form 1432s are only required for those DBE firms that are part of the counted DBE participation on the contract. DBE firms can participate on the contract without the use of the forms, but their DBE participation will not be counted. For eligible DBE participation, one form with all of the signatures (prime, sub, and engineer) must be filled out per company.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing and the DBE credit claimed for its performance of the work, and other relevant factors.

## Regulation/Rule/Specification

The federal requirement can be found in [49 CFR Part 26](#).

CDOT's DBE contract requirements are found in [CDOT's DBE Special Standard Provision](#).

## FAQs

1. Do all DBEs have to have a CUF form completed for each project?

No. A CDOT Form 1432 shall be completed and approved for each DBE on the contract in order to count as eligible participation. It is considered best practice to have CDOT Form 1432 completed for all DBE firms on the contract (including DBE firms that are not included on the utilization plan). In the event of a substitution or additional eligible participation being required and the prime contractor requests to convert race-neutral DBE participation (the firm is not part of the utilization plan) to race-conscious participation (the DBE counts toward the contract goal), an approved CDOT Form 1432 is required for the DBE firm.

2. Are there certain timeframes when the CDOT Form 1432 is required to be completed and submitted to CDOT?

Yes, Section B of the CDOT Form 1432 shall be completed by the DBE firm within 45 days of the DBE beginning work on the contract. Section B of the form shall be completed prior to the DBE completing work per its contract/subcontract. Once completed, the DBE shall submit the form to the prime contractor. The prime contractor shall complete the questions in Section C of the CDOT Form 1432 within 10 days of receiving the form from the DBE firm. Once completed, the prime contractor shall submit the form to the CDOT PE/PM for his/her review.

3. What if the DBE firm is only on the project for a total of seven (7) days, can I still submit the form within forty-five (45) days of the DBE beginning work?

No, Section B of the CDOT Form 1432 shall be completed by the DBE firm prior to the DBE completing work on the project.

# 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 CDOT Form 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](#).

CDOT's rule is included in Section 109.06 of the [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 CDOT contract, complete with all of its associated obligations prior to closing out the project in the CDOT systems.

## Who is Impacted?

The prime contractors and subcontractors can be involved in the close out process as CDOT makes determinations about whether or not goals were met and obligations were fulfilled. If requirements (for Civil Rights and other areas) were met, everything moves forward. If requirements were not met, the PE/PM will direct next steps in terms of moving forward or withholding progress estimates. CDOT Finals Engineers review the prime contractor's progress toward its obligations as well as contract goals to establish withholding of progress payments and potential financial disincentives.

## What is Required?

CDOT Region Civil Rights Officers review several items before the project is closed:

- 1) The prime contractor's DBE commitments as related to the contract DBE goal (including CDOT Form 1432 for each DBE counted as eligible participation).
- 2) The prime contractor's fulfillment of the OJT goal.
- 3) B2GNow audits are complete with no discrepancies.
- 4) The certified payroll records are complete, within compliance, and are approved by the prime contractor and accepted by the CDOT PE/PM.
- 5) CDOT Form 205 and 1425 have been submitted, uploaded, and approved as needed for the project.

## FAQs

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

Absent an approved CDOT Form 1420 for a reduction or termination of a DBE commitment or for a shortfall of meeting the DBE goal due to a contract modification order where work was added, 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. What happens if a prime contractor falls short of its contract OJT goal?

Absent an approved CDOT Form 1336 for the prime contractor not meeting the contract OJT goal, the prime contractor may be issued a disincentive as outlined in the OJT standard special provision.

3. 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.