

# CDOT PROFESSIONAL SERVICES CIVIL RIGHTS AND DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS FOR PROJECT SPECIFIC/PROGRAM SPECIFIC CONTRACTS

All parties included in the performance of work on the Contract shall comply with **Sections 3L, M, P and Q** of the Solicitation for Professional Consultant Services form.

## I. DEFINITIONS

*B2GNow*. Web based platform utilized by CDOT to track Civil Rights compliance (DBE/ESB participation) and prompt payment requirements on its contracts. The Consultant will use this platform to submit Utilization Plan(s), Subconsultant and Supplier/Vendor information on the Master Contract and subsequent Task Orders.

*Civil Rights*. The CDOT Civil Rights office that assists with the contract and prompt payment requirements.. This can be in either the region or headquarters office.

*Civil Rights and Business Resource Center (CRBRC)*. CDOT's Civil Rights office at Headquarters.

*Commercially Useful Function (CUF)*. Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR Part 26.55(c).

*Commitment*. A portion of the Master Contract designated by the Consultant for participation by DBE firms. The DBE firm(s) are included in the proposal team for participation to meet the Contract Goal. Commitments must identify the work to be performed by the DBE and include the percentage of the contract committed to each DBE firm. Commitments are measured at the end of the contract and are calculated by the actual payments to a DBE firm divided by the total payments made under the Master Contract.

*Contract*. Agreement between the Local Agency and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services.

*Contract Goal Percentage*. The percentage of the Master Contract established by CDOT for reasonable participation by DBEs and stated in the invitation for consultant services.

*Consultant*. An individual, firm, corporation, or other legal entity with a direct contractual relationship with CDOT to render Professional Services and ancillary services.

*Disadvantaged Business Enterprise (DBE)*. A Colorado certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at [www.coloradodbe.org](http://www.coloradodbe.org).

*Emerging Small Business (ESB)*. A CDOT certified Emerging Small Business firm listed on the ESB Directory at [www.coloradoesb.org](http://www.coloradoesb.org).

*Good Faith Efforts (GFE)*. All necessary and reasonable steps to secure the necessary Commitments to achieve the Contract Goal or other requirements of this contract, which by their scope, intensity, and appropriateness to the objective could reasonably be expected to fulfill the contract requirement. Guidance on Good Faith Efforts to meet the Contract Goal is provided in 49 CFR Part 26, Appendix A.

*Master Contract*. Overarching agreement between CDOT and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services.

*Professional Services*. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colorado Revised Statute (CRS) 24-30-1402 and 48 CFR Part 2.

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*Reduction.* Reduction occurs when the Consultant reduces a Commitment to a DBE. A Reduction is a partial Termination.

*Subconsultant.* An individual, firm, corporation or other legal entity to whom the Consultant sublets part of the contract. For purposes of these requirements, the term Subconsultant includes Suppliers/Vendors.

*Substitution.* Substitution occurs when a Consultant seeks to find another DBE certified firm to perform work on the contract as a result of a Reduction or Termination.

*Task Order.* Agreement between CDOT and the Consultant to provide particular services for a specified amount within the scope of the overarching Master Contract.

*Termination.* Termination occurs when a Consultant no longer intends to use a DBE firm for fulfillment of a Commitment. This includes, but is not limited to, instances in which a Consultant seeks to perform work originally designated for a DBE Subconsultant with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

*Utilization Plan (UP).* Documentation of Subconsultant and Supplier/Vendor participation in the B2GNow system. The Master Contract Utilization Plan details all Subconsultants and Suppliers/Vendors included as part of the proposal team. The Master Contract Utilization Plan must be submitted in B2GNow by the Consultant and approved by CDOT within five (5) calendar days of receiving notice from CDOT to complete the Utilization Plan prior to any Task Order requests being reviewed for approval.

*Vendor.* Participant on a CDOT contract that is providing services not considered to be a Professional Services as defined in Colorado Revised Statute 24-30-1402 and 48 CFR Part 2. A vendor would provide Non-Engineering Services (i.e. Geotechnical drilling, Public Information/Relations, traffic control, etc) and would not be overseen by a licensed engineer.

*Work Code.* A code to identify the work that a DBE is certified to perform. A work code includes a six (6) digit North American Industry Classifications System (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory at <https://coucp.dbesystem.com/>. The consultant may contact the Civil Rights and Business Resource Center (CRBRC) to receive guidance on whether a work code covers the work to be performed.

## II. NONDISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts.

A. *Non-discrimination.* The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either 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.

B. *Civil Rights Act of 1964 Title VI.* CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this

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invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

C. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract. Such other remedy as CDOT deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments
- Assessing sanctions/disincentives
- Liquidated damages
- Disqualifying the consultant from future bidding as non responsible

D. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) calendar days of receipt of payment from CDOT or no later than ninety (90) calendar days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify the Subconsultant and CDOT no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include failure to timely submit an invoice or to deposit payments made. The Consultant shall electronically submit prompt payment audit reports through B2GNow software by the fifteenth (15<sup>th</sup>) of each month. If no payment has been made, the Consultant shall document this in the prompt payment audit report. CDOT will enforce the states Prompt Payment law, Colorado Revised Statute (CRS) 24-91-103(2) and 49 CFR Part 26.

E. *Subcontract Terms.* The assurance of parts “A-D” of this section shall be included in all subcontracts or other agreements for the performance of work on the contract.

### III. MASTER CONTRACT COMMITMENT

At the time of initial proposal, the proposer must make a contractually binding guarantee to meet the Contract Goal in accordance with 49 CFR 26.53.

A. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation is the proposer’s contractually binding guarantee to meet the Contract Goal. This form includes the Commitments to meet the DBE goal. CDOT’s *Affidavit of Small Business Participation* form must be submitted with the proposer’s statement of interest proposal. Failure to submit CDOT’s *Affidavit of Small Business Participation* form will result in the proposer being deemed non responsive and ineligible for award.

B. *Master Contract Utilization Plan (UP).* Within five (5) calendar days of selection as the “most qualified,” the proposer will receive a notice from CDOT to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all DBE, ESB, and non-DBE/ESB Subconsultants and Suppliers/Vendors included as part of its “most qualified” team. The Utilization Plan shall also include all Commitments by percentage. Requests for Task Orders under the Master Contract will not be submitted until there is a Master Contract Utilization Plan approved by CDOT in the B2GNow system.

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- C. *Consultant Responsibility.* The Consultant is solely responsible for ensuring that the Contract Goal is achieved upon completion of the work, expenditure of funds, and/or expiration of the Master Contract, whichever occurs first.
- D. *Master Contract Good Faith Effort Requirement.* The Master Contract will not be approved by CDOT unless the proposer documents sufficient Commitments to meet the Contract Goal or demonstrates Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining sufficient Commitments to do so.
1. Good Faith Efforts mean that the proposer:
    - a. Documents it has obtained enough DBE participation to meet the Contract Goal; or
    - b. Documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so
  2. If the proposer has not documented sufficient Commitments to meet the Contract Goal, the proposer shall provide an explanation of its efforts to obtain Commitments by submitting the CDOT's *Professional Services Good Faith Efforts Report* form and supporting documentation.
    - a. The Civil Rights and Business Resource Center will conduct a review to determine whether the proposer has demonstrated Good Faith Efforts to meet the Contract Goal
    - b. The Civil Rights and Business Resource Center will approve the Master Contract Utilization Plan if it determines that the proposer has made Good Faith Efforts to meet the Contract Goal
  3. In conducting Good Faith Effort reviews, the Civil Rights and Business Resource Center will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The Civil Rights and Business Resource Center may also consider, but is not limited to, the following factors in evaluating the proposer's Good Faith Efforts:
    - a. Performance of other consultants in meeting DBE goals on contracts that have a similar scope of work, contract amount, location, and time frame
    - b. Proposer's reason(s) for choosing a nonDBE subconsultant over an interested DBE
    - c. Documentation of DBEs solicited by the proposer and verification from the DBEs that they were actually contacted by the proposer
    - d. Past performance by the proposer on contracts that have a similar scope of work, contract amount, location, and time frame
    - e. Any other factors that may be pertinent to the factual circumstances

If the Civil Rights and Business Resource Center determines that the proposer has made Good Faith Efforts to meet the Contract Goal, the Master Contract Utilization Plan will be approved.

E. *Good Faith Efforts Protest.* If the Civil Rights and Business Resource Center determines that the proposer did not demonstrate Good Faith Efforts to meet the Contract Goal, the proposer may to protest to the Chief Engineer in accordance with Section 8 of the *Solicitation for Professional Services*.

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**IV. SCORING**

In evaluating the most qualified proposer, a maximum of 10 points may be awarded based upon a variety of factors, including a proposal’s strategic small business participation plan, the proposer’s certification status, and/or the proposer’s potential standing as a new prime consultant on a CDOT project.

A. NonDBE/ESB Consultants can only receive a maximum of five (5) points. Consultants only holding a single certification (DBE or ESB) can receive a maximum of seven (7) points. However, such firms may receive a maximum of ten (10) points if such firms state they have not been awarded a CDOT professional services contract as a Prime Consultant for the past three (3) years in their Strategic Small Business Participation Plan. Consultants holding both DBE and ESB certifications may receive a maximum of ten (10) points.

B. A new teaming partnership occurs when the Consultant is a Prime and has not included the DBE/ESB Subconsultant on a CDOT awarded contract in the previous two (2) years. The period for evaluating new teaming relationships will be the two (2) years immediately preceding the date that the Request for Proposals are advertised for the Master Contract that is being scored for award. New teaming relationships must be subconsultants and do not include Suppliers/Vendors.

C. To receive points associated with the CDOT Mentor-Protege Program, both the Mentor and their Protege shall be included in the proposal and the firms must be an active program participant or be less than one year post graduation following the completion of the complete two year program. The Consultant must provide written documentation within the Strategic Small Business Participation Plan evidencing active participation in the program (i.e., dates met with program partner, current team goals, written statement detailing progress made toward the established team goals, etc.). Acceptance into the CDOT Mentor-Protege Program will not be considered evidence of active participation in the program without additional documentation of the firm's activities as a program participant.

D. If the contract goal has been set to zero (0) percent, small business participation is still encouraged by CDOT for scoring purposes and to assist with small businesses working with CDOT.

Points will be allocated using the following rubric:

		Scoring Rubric						
		0 points	0.5 points	1 point	2 points	5 points		
Strategic Small Business Participation Plan (Maximum of 5 Points). The plan should state a comprehensive approach to strategic small business participation and should contain the following elements: Small Business Participation and Contingency Plan, General/Specific type of work for DBE subconsultants and Vendors, New Teaming Partner in past 2 years of ad date OR is an active participant in the CDOT Mentor/Protege Program and on the team, Small Business Contract Compliance Oversight.	1	Small Business Participation and Contingency Plan	No outlined specific approach to subcontracting OR contingency plan identified if the planned approach or team does not meet the DBE goal(s) OR is nonresponsive.	Firm provides general approach OR contingency plan with minimal detail if the planned approach or team does not meet the DBE goal(s).	An outlined specific approach to subcontracting, including a plan for unbundling work to establish opportunities for DBEs and ESBs as well as identification of specific work areas that DBE and ESB firms will be utilized on during the contract. This will include a detailed contingency plan if the planned approach or team changes or does not meet the DBE goal.	n/a	n/a	
	2	General/Specific type of work of DBE Subconsultants and Vendors (Maximum of 10% Vendors) work	Team Does not Include Any DBEs OR is nonresponsive	Any DBE firm included on proposal team	Only specialized work of DBE firms included on team OR only general work of DBE firms included on team who cannot perform the bulk of the work expected under this contract. Must state in Small Business Participation Plan.	DBE firms included on team represent a mix of general (CA, CI, MT) AND specialized work areas required by this contract OR the Prime Consultant has active DBE Certification. Must state in Small Business Participation Plan.	n/a	n/a
	1	New DBE or ESB Teaming Partner on a CDOT contract in past 2 years as of ad date of project OR an Active Participant in the CDOT Mentor/Protege Program	No new teaming partners identified OR is nonresponsive	DBE OR ESB new teaming partner identified without specific plan for integrating new teaming partner on the project	DBE AND ESB new teaming partners identified with specific planned approach for utilizing firms OR the Prime Consultant is an active/1 year graduate participant in the CDOT Mentor/Protege Program AND is submitting a proposal that includes utilization of their protege	n/a	n/a	
	1	Small Business Contract Compliance Oversight	Proposal does not highlight an individual OR process responsible for monitoring/enforcing Civil Rights compliance on the project including prompt payment, DBE utilization, etc. OR is nonresponsive	Compliance person identified OR process described with minimal detail	Proposal highlights identification of compliance person AND outlines specific planned processes to monitor Civil Rights compliance on project	n/a	n/a	
Certification Status and New Prime Opportunities	5	Prime Consultant Certification	No DBE OR ESB certification	n/a	n/a	DBE Certification OR ESB Certification	DBE Certification AND ESB Certification OR Consultant has one type of Certification (single certification) AND is bidding as a New Prime Consultant that has never been awarded a Professional Services (NPS/PS/PGS) Contract in the past three years	
		<b>10</b>						

July 1, 2022

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## V. TASK ORDER PROCESS

With each Task Order request, the Consultant shall submit a CDOT *Anticipated Participation Plan for Project Specific/Program Specific Contracts and Plan Status Report* form that documents all DBE and/or ESB Subconsultants that will be used to complete the work of the Task Order.

A. *Task Order Approval and Documents.* CDOT's approval of a Task Order is neither a determination on the Consultant's Good Faith Efforts to fulfill its Commitments, nor a basis for waiving any portion of the Contract Goal.

1. Documents include the CDOT *Task Order Request Form*, Project Cost Worksheet(s) with a CDOT *Anticipated Participation Plan for Project Specific/Program Specific Contracts and Plan Status Report Form*. The Consultant must submit and upload a Letter of Intent confirming the use of any Supplier/Vendor for which a Project Cost Worksheet is not provided with all other pertinent documents.
2. If an Amended Funds or Time Extension Task Order request, CDOT Civil Rights will upload the documents in B2GNow and make changes to the Contract through the Change Order/Task Order tab when the task order is approved.
3. The Consultant will submit a completed CDOT *Professional Services Closeout Report* form for every task order to the Civil Rights Office upon completion of the work, expenditure of funds, and/or expiration of the task order, whichever occurs first. This form will report the final actual DBE participation on the task order and will be considered in the closeout of the Master Contract for possible sanctions. See Task Order and Master Contract Closeout section.

## VI. ELIGIBLE DBE PARTICIPATION

In order to count towards the Contract Goal, (1) the work performed by the DBE Consultant, Subconsultant, or Supplier/Vendor must be identified in an approved Commitment, and (2) the Consultant, Subconsultant, or Supplier/Vendor must be DBE certified in the committed work upon submission of the Commitment and approval of the Task Order. CDOT will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Supplier/Vendor is certified.

A. If a Consultant, Subconsultant, or Supplier/Vendor is decertified as a DBE following the approval of a Task Order, its participation on that Task Order may continue to count as DBE participation. The Consultant, Subconsultant, or Supplier/Vendor may not continue to count as a DBE participant on new Task Orders approved after decertification even if the Consultant, Subconsultant, or Supplier/Vendor was certified at the time of Master Contract award.

B. If a Consultant is certified as a DBE after the Master Contract award, the Consultant's participation on new Task Orders approved after it has been certified as a DBE will count towards the DBE goal. Commitments approved at the time of the Master Contract award continue to be binding on the Consultant. If a Subconsultant or Supplier/Vendor is certified as a DBE after Master Contract award, participation by the Subconsultant or Supplier/Vendor on new Task Orders approved after it has been certified as a DBE will count towards the DBE goal.

C. Only work actually performed by the DBE will count towards the Contract Goal.

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1. The Consultant may count the entire amount of fees or commissions charged by a DBE firm for:
  - a. Providing a bona fide service, such as professional, technical, consultant, or managerial services; and/or
  - b. Providing assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance on the Task Order, provided that the fee or commission is determined by CDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services
  
2. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subconsultant is also a DBE certified firm.
  - a. Work that a DBE subcontracts out to a non-certified firm will not count toward the goal. If the work includes materials, partial DBE participation may be included.
  - b. DBE firms may use an employee leasing company for the work
    - i. The participation of the leased employees will count only if the certified DBE firm maintains an employer-employee relationship with the leased employees.
    - ii. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
  - c. Unless certified in the work to be performed, staffing agencies only count toward the Contract Goal for placement fees and any hourly fee beyond the temporary employee's actual rate of pay.
  
3. When a DBE performs as a participant in a joint venture:
  - a. Only the portion of the total dollar value of the Task Order equal to the distinct, clearly defined portion of the work of the Task Order that the DBE performs with its own forces may count toward the Task Order Goal.
  - b. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT.
  
- D. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.
  1. To perform a Commercially Useful Function:
    - a. The DBE must be responsible for the execution of the work to be performed on any Task Order and
    - b. Actually performing, managing, and supervising the work
  
  2. In evaluating whether a DBE is performing a Commercially Useful Function, CDOT will consider factors, including but not limited to:
    - a. The amount of subcontracted work
    - b. Industry practices and
    - c. Whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors
  
  3. A DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.

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4. A DBE Prime is presumed as not performing a Commercially Useful Function:
  - a. When it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce; or
  - b. When the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.
  - c. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption
5. In order to finalize the contract, the Consultant must have submitted a CDOT *Professional Services Commercially Useful Function Questionnaire* form for each DBE firm that performed work or provided supplies toward meeting the contract goal. The DBE, Consultant and CDOT Engineer must sign the CDOT *Professional Services Commercially Useful Function Questionnaire* form.
6. CDOT's determinations regarding Commercially Useful Function matters are not appealable.

## VII. UTILIZATION PLAN MODIFICATIONS

A. *Reduction, Substitution, Termination.* Reduction, Substitution, or Termination during the life of the Master Contract shall only be permitted at the discretion of CDOT based upon a demonstration of Good Cause by the Consultant. The Consultant may not Reduce, Substitute, Terminate, or add Commitments without CDOT approval. Consultants may request modification approval by submitting to CDOT the *Professional Services DBE Participation Plan Modification Request* form.

1. *Notice to Subconsultant.* Before requesting CDOT approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work through the CDOT *Professional Services DBE Participation Plan Modification Request* form. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) calendar days to respond to the Consultant's notice and advise CDOT of its objections, if any, to the proposed Reduction, Termination, and/or Substitution and why the Consultant's proposed action should not be approved. If required as a matter of public necessity (e.g., safety), CDOT may waive or reduce the period to respond. The DBE firm may also voluntarily waive the response period.
2. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by CDOT. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self-perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, CDOT will consider, but is not limited to, the following factors:
  - a. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE
  - b. Failure or refusal by the DBE to execute a written contract
  - c. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants
  - d. The DBE fails to meet reasonable, nondiscriminatory insurance requirements
  - e. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
  - f. The DBE is ineligible to work because of suspension or debarment proceedings or other state law
  - g. The DBE is not a responsible Consultant



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- h. The listed DBE voluntarily withdraws from the project and provides to you written notice of its withdrawal
- i. The listed DBE is ineligible to receive credit for its participation
- j. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform
- k. The DBE ceases business operations or otherwise dissolves; and/or
- l. Other documented good cause reasons determined by CDOT to compel the termination of the DBE Subconsultant

3. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find a Substitution up to the Contract Goal for the DBE whose Commitment has been Terminated or Reduced. Substitutions do not have to be in the same type of work that was Terminated or Reduced.

- a. Prior to making a Substitution, the Consultant must submit a *CDOT Professional Services DBE Participation Plan Modification Request* form and receive CDOT's approval for the Substitution.
- b. An approval of the modification constitutes a change order through the B2GNow software on the Master Contract. A Project Cost Worksheet, or a Letter of Intent for Supplier/Vendor, Subconsultants, must be submitted for each Substitution approved by CDOT.

B. *Amended Task Orders.* Consultants must obtain prior CDOT approval for the addition of Subconsultants and Suppliers/Vendors not previously included as part of the selected team and whose participation will be used to count towards the Contract Goal.

### **VIII. ENFORCEMENT**

It is the sole responsibility of the Consultant to ensure that Commitments are fulfilled or to request Utilization Plan modifications in a timely manner as described in the Utilization Plan Modifications section. Approval of Task Orders and change orders under the Master Contract is not an explicit or implicit approval by CDOT of any Commitment Terminations, Reductions, Substitutions, or any other waiver of the Master Contract DBE requirements.

A. CDOT may conduct reviews or investigations of participants as necessary. All participants on the Master Contract and all subsequent Task Orders under that Master Contract, including, but not limited to, DBE Subconsultants or Suppliers/Vendors, applicants for DBE certification and complainants to meet contract goals are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information. This also includes applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the Contract Goal.

B. If CDOT determines that a Consultant, Subconsultant or Supplier/Vendor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, CDOT may:

1. Refuse to count any fraudulent or misrepresented DBE/ESB participation
2. Withhold progress payments to the Consultant commensurate with the violation
3. Reduce the Consultant's prequalification status
4. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or

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5. Seek any other available contractual remedy
- C. CDOT will withhold approval of Task Orders and/or seek reimbursement at Contract closing from the Consultant for failure to comply with these requirements.
- D. A Consultant shall not receive payment for any work performed on a Task Order resulting from a Modification that is not authorized by CDOT. If the Consultant fails to fulfill any Commitments at the conclusion of the Master Contract, CDOT will seek reimbursement from the Consultant equaling the difference between the total dollar amount of its Commitments and the total dollar amount of actual payments made to committed DBEs.
- E. CDOT will adjust the total reimbursement amount if the Consultant demonstrates that its failure to meet Commitments was approved by CDOT through the modification process described in the Utilization Plan Modifications section.
- F. For the purposes of evaluating the reimbursement amounts that CDOT will be seeking from the Consultant for unfulfilled Commitments, CDOT shall consider, but is not limited to, the following:
  1. The difference between the total Master Contract amount awarded and the actual payments made by CDOT to the Consultant
  2. Any material changes to the Master Contract, including the scope of the work, total amount, location, and scheduling
  3. Whether any of the work types associated with a Commitment was self performed by the Consultant or performed by another firm
  4. Whether the Consultant was aware of any circumstances that would materially affect its ability to meet its Commitments and took timely and reasonable steps to address it
  5. Circumstances outside of the Consultant's control; and/or
  6. Any other relevant considerations
- G. CDOT will provide written notice to the Consultant of any amounts for which it is seeking reimbursement. Consultants must reimburse CDOT within thirty (30) calendar business days of the written notice.

**IX. TASK ORDER AND MASTER CONTRACT CLOSEOUT**

CDOT will collect a completed CDOT *Professional Services Closeout Report* form upon completion of the work, expenditure of funds, and/or expiration of each Task Order and Master Contract, whichever comes first. This form will report the final actual DBE participation on the Master Contract and any amounts for which CDOT will be seeking reimbursement due to the Consultant not meeting Commitments.