

**COLORADO DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM MANUAL**

REVISED NOVEMBER 2016

TABLE OF CONTENTS

SUBPART A – GENERAL

- Section 1: Objectives
- Section 2: Application
- Section 3: Definitions and Terms
- Section 4: Nondiscrimination
- Section 5: USDOT Guidance and Interpretations
- Section 6: Record Keeping and Reports
- Section 7: Assurance Statements
- Section 8: Exemptions or Waivers

SUBPART B – ADMINISTRATIVE REQUIREMENTS

- Section 1: CDOT's DBE Program
- Section 2: Policy Statement
- Section 3: DBE Liaison Officer
- Section 4: DBE Financial Institutions
- Section 5: Prompt Payment and Retainage
- Section 6: DBE Directory
- Section 7: Overconcentration
- Section 8: Business Development Program
- Section 9: Monitoring and Enforcement Mechanisms
- Section 10: Race-Neutral Small Business Participation

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

- Section 1: Role of Statutory 10% Goal
- Section 2: Use of Set-Asides or Quotas
- Section 3: Setting Overall Goals
- Section 4: Failure to Meet Overall Goal
- Section 5: Transit Vehicle Manufacturers
- Section 6: Meeting Annual Overall Goals
- Section 8: Good Faith Efforts Process
- Section 9: Counting DBE Participation Toward Goals

SUBPART D – DBE CERTIFICATION APPLICATION AND STANDARDS

- Section 1: Burdens of Proof
- Section 2: Group Membership
- Section 3: Business Size Determinations
- Section 4: Determination of Social and Economic Disadvantage
- Section 5: Determination of Ownership
- Section 6: Determination of Control
- Section 7: Other Rules Affecting Certification

SUBPART E – CERTIFICATION PROCEDURES

- Section 1: Unified Certification Program
- Section 2: Procedures in Making Certification Decisions
- Section 3: Interstate Certification

- Section 4: Denials of Initial Requests for Certification
- Section 5: Removing a DBE's Eligibility
- Section 6: Summary Suspension of Certification
- Section 7: Appealing Certification Decisions to the USDOT
- Section 8: Effect of USDOT Certification Appeal Decisions

SUBPART F – COMPLIANCE AND ENFORCEMENT

- Section 1: Compliance Procedures Which Apply to CDOT
- Section 2: Enforcement Actions under FHWA and FTA
- Section 3: Enforcement Actions in FAA Programs
- Section 4: Enforcement Actions for Participants in the DBE Program
- Section 5: Confidentiality, Cooperation, and Intimidation or Retaliation

SUBPART G – EXHIBITS

- Exhibit A 2018 DBE Program Approval
- Exhibit B Memorandum of Understanding for FTA Direct Recipients
- Exhibit C Policy Directive 604.0
- Exhibit D Organizational Chart
- Exhibit E Direct and Independent Access
- Exhibit F Professional Services DBE/ESB Requirements
- Exhibit G Reporting Requirements and FAQs for Grant Partners
- Exhibit H FHWA ESB Approval
- Exhibit I FTA ESB Approval
- Exhibit J Good Faith Effort Administrative Reconsideration Process
- Exhibit K UCP Program Plan

SUBPART A – GENERAL

Section 1: Objectives

As stated in 49 CFR 26.1, the objectives of the United States Department of Transportation (USDOT or DOT) Disadvantaged Business Enterprise (DBE) program are:

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in DOT's highway, transit and airport financial assistance programs;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet 49 CFR Part 26's eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- f. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
- g. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
- h. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs

The Fixing America's Surface Transportation (FAST) Act reauthorized the implementation of the DBE program and affirmed the compelling need for its continuation to address race and gender discrimination in surface transportation-related business.

Ref: 49 CFR 26.1

Section 2: Application

USDOT's DBE Program applies to all recipients that directly or indirectly receive federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; and airport funds authorized by 49 U.S.C. 47101, et seq.

The DBE Program does not apply to any contract that is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands or any contract in which DOT financial assistance does not participate.

Ref: 49 CFR 26.3

Section 3: Definitions and Terms

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- a. One concern controls or has the power to control the other; or
- b. A third party or parties controls or has the power to control both; or
- c. An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

CDOT means the Colorado Department of Transportation.

CDOT DBE Program means the program administered by CDOT according to this DBE Program Manual in order to carry out the requirements of 49 CFR Part 26.

CFR means the Code of Federal Regulations.

Compliance means correct implementation of the requirements of 49 CFR Part 26.

Contingent liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days means calendar days unless otherwise stated. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where CDOT's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Disadvantaged Business Enterprise (DBE) means a for profit small business concern:

- a. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DBE Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

DOT-assisted Contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Emerging Small Business (ESB) Program means CDOT's race-neutral small business program governed by 2 CCR 604-1 and the ESB Program Guidelines.

Good Faith Efforts means efforts to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal.

Home State means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which

the tribe, band, nation, group, or community resides. See definition of “tribally owned concern” in this section.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not for profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that the requirements of 49 CFR Part 26 have not been correctly implemented.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participating DBE firm or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/> .

Primary recipient means a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm’s day to day operations spend most working hours and where top management’s business records are kept. If the offices from which management is directed and where business records are kept are in different locations, CDOT will determine the principal place of business for DBE program purposes.

Race conscious measure or program means one that is focused specifically on assisting only DBEs, including women owned DBEs.

Race neutral measure or program means one that is, or can be, used to assist all small businesses. For the purposes of this part, race neutral includes gender neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set aside means a contracting practice restricting eligibility for the competitive award of a contract, solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in state and DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control. Socially and economically disadvantaged includes:

- a. Any individual who a recipient finds to be a socially and economically disadvantaged individual. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group;
- b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - iv. "Asian Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. "Women;"
 - vii. "Other," which means any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective and/or individuals who have been determined to be socially and economically disadvantaged based on the criteria for social and economic disadvantage.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Subrecipient means any recipient that receives Federal funds from FHWA, FTA or FAA through CDOT.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

USDOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Ref: 49 CFR 26.5

Section 4: Nondiscrimination

CDOT and its subrecipients shall not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, CDOT and its subrecipients shall not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

Ref: 49 CFR 26.7

Section 5: USDOT Guidance and Interpretations

CDOT acknowledges that written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement, “The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.”

Ref: 49 CFR 26.9

Section 6: Record Keeping and Reports

For each overall goal established by CDOT, by June 1 and December 1 of each year, or as otherwise requested, CDOT will transmit a Uniform Report of DBE Awards or Commitments and Payments, to the

applicable OA. Additionally, CDOT will continue to provide data about the CDOT DBE Program to USDOT as directed by the USDOT OAs.

By January 1 of each year, CDOT will report to the USDOT Office of Civil Rights the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following: women; socially and economically disadvantaged individuals (other than women); and individuals who are women and are otherwise socially and economically disadvantaged individuals.

CDOT will continue to maintain a bidders list to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on CDOT's Federally-assisted contracts for help in setting its overall goals. As of January 2017, CDOT will use an annual registration process to create its bidders list. During the registration, CDOT will collect the following information:

- a. Firm name and address;
- b. Age of firm;
- c. Annual gross receipts;
- d. Number of employees; and
- e. Primary NAICS code.

The registration occurs in the same system used to manage the Colorado UCP Certification Directory. Therefore, the status of the firm as a DBE is provided via the vendor profile. CDOT also collects data on potential bidders via the Connect2DOT newsletter sign up form and program registration.

CDOT will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, CDOT will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with applicable record retention requirements of CDOT's financial assistance agreement with its OAs. CDOT will maintain other certification or compliance related records for a minimum of three (3) years unless otherwise provided by its financial assistance agreements, whichever is longer.

CDOT currently maintains a mix of paper and electronic records. Paper files are maintained in a locked room with access only by the Civil Rights and Business Resource Center staff. Electronic files are kept in B2G and are only available to management and certifications staff.

Ref: 49 CFR 26.11

Section 7: Assurance Statements

Each financial assistance agreement CDOT signs with its subrecipients will include the following assurance:

The subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of the DBE program or the requirements 49 CFR part 26. The subrecipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. CDOT's DBE program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to CDOT of its failure to carry out

its approved program, the USDOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Each contract CDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CDOT deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

Ref: 49 CFR 26.13

Section 8: Exemptions or Waivers

CDOT is not currently operating under any exemptions or waivers to the requirements of 49 CFR Part 26. If any such exemption or waiver becomes necessary, CDOT will follow the procedures outlined in 49 CFR 26.15. USDOT approval of CDOT's DBE Program can be found at **Subpart G, Exhibit A**.

Ref: 49 CFR 26.15

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 1: CDOT's DBE Program

CDOT has submitted this program to FHWA for approval which shall count for all of CDOT's DOT-assisted programs, provided that CDOT's goals shall be reviewed by the particular OA that provides funding for its DOT-assisted contracts. CDOT will not submit regular updates of its DBE programs so long as it remains in compliance. However, CDOT will submit significant changes in the program for approval. CDOT will continue to carry out its program until all funds from USDOT financial assistance have been expended.

Subrecipients of FHWA funds from CDOT (i.e. local agencies) are subject to and must operate in accordance with CDOT's DBE Program for all FHWA funded contracts.

Subrecipients of FTA funds from CDOT are subject to and must operate in accordance with CDOT's DBE Program unless the grant partner is a direct recipient of FTA funds and has a current OA-approved DBE program and overall goal. While agreements are not required to be in writing, a template of CDOT's MOU for grant partners seeking to implement their own DBE program is provided as **Subpart G, Exhibit B**.

Ref: 49 CFR Part 26.21

Section 2: Policy Statement

CDOT has issued signed Policy Directive which complies with the requirements of 49 CFR 26.23. A copy of Policy Directive is found in **Subpart G, Exhibit C**.

Ref: 49 CFR Part 26.23

Section 3: DBE Liaison Officer

CDOT's designated DBE Liaison Officer is the Director of the Civil Rights and Business Resource Center:

Greg Diehl
4201 E. Arkansas Avenue, Room 150,
Denver, CO 80222
303-757-9599
greg.diehl@state.co.us.

The DBE Liaison Officer is responsible for developing, implementing and monitoring all aspects of the DBE Program and ensuring that the CDOT complies with all provisions of 49 CFR Part 26. The DBELO reports to the CDOT Chief Engineer but also has direct access to the Executive Director of CDOT as show in the organization chart attached as **Subpart G, Exhibit D** and Assurance of Direct and Independent Access provided as **Subpart G, Exhibit E**.

To administer the DBE Program, the DBE Liaison Officer is supported by staff within the CDOT headquarters Civil Rights and Business Resource Center as well as the regional civil rights offices. See **Subpart G, Exhibit E** for the current staffing for the Civil Rights and Business Resource Center. CDOT

will continue to ensure that it has adequate staff to administer the program in compliance with 49 CFR Part 26.

Ref: 49 CFR 26.25

Section 4: DBE Financial Institutions

CDOT will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community and make reasonable efforts to use these institutions. CDOT will also encourage prime contractors to use such institutions.

Ref: 49 CFR 26.27

Section 5: Prompt Payment and Retainage

CDOT requires payment to subcontractors and subconsultants with seven days of payments from CDOT. Additionally, on professional services contracts, regardless of when the payor is paid, payment may not be delayed more than ninety (90) days from invoice. For CDOT's construction contracts, the prompt payment criteria are outlined in CDOT Standard Specifications for Road and Bridge Construction Section 109.06, which can be found at

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

For professional services and innovative contracts, the requirements can be found in the applicable contract and advertisement. A template of the contract provisions for professional services contracts is provided as **Subpart G, Exhibit F**.

On construction projects, CDOT withholds retainage from prime contractors and provides for prompt and regular incremental acceptances of portions of the prime contract, pays retainage to prime contractors based on these acceptances, and requires a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 days after its payment to the prime contractor. Section 109.06 Retainage and Partial Payments can be accessed at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/2017-specs-book/standard-specifications-2017-final.pdf/view>.

Prompt payment is enforced through collection and review of a monthly prompt payment form (Form 1418 used prior to adoption of B2GNow) and/or the submission of monthly audits in the B2GNow system. In the B2GNow system, subcontractors can validate the payment made by the prime or issue notice to CDOT of a discrepancy in the prime's report. Discrepancies may include untimely payment, payment below amount due, or no payment made. In addition, subcontractors may contact the Regional Civil Rights Office (RCRO) or the engineer to issue a complaint.

CDOT's contract provisions state that delay may take place only for good cause. The project engineer is responsible for reviewing any discrepancies or complaints and making a determination of whether there has been good cause for delay. CDOT's contract provisions allow CDOT to issue corrective actions, withhold payment and/or stop the project if the contractor is not in compliance.

Ref: 49 CFR 26.29

Section 6: DBE Directory

The Colorado UCP maintains and makes available to all persons an online DBE Directory identifying all firms certified by the Colorado UCP at www.coloradodbe.org. The listing for each firm includes the firm's name, address, phone number, fax number, email, and contact person and lists each type of work for which a firm is eligible as a DBE according to NAICS code(s). A complete work code consists of a 6-digit industry sector code and a text description. A directory of ESB firms is also available at www.coloradoesb.org.

Ref: 49 CFR 26.31

Section 7: Overconcentration

If CDOT determines that DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non DBE firms to participate in this type of work, CDOT will devise appropriate measures to address this over concentration and obtain the approval of the concerned USDOT operating administration. CDOT will consider the measures proposed by 26.33(b) and obtain the approval of the concerned OA before implementing any measures.

Ref: 49 CFR 26.33

Section 8: Business Development Program

CDOT has been directed by FHWA to establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. CDOT implements this BDP through its Connect2DOT partnership with the Colorado Small Business Development Centers (SBDC). Additional information on CDOT's BDP can be found in CDOT's scope of work for DBE supportive services submitted each year to FHWA. The BDP website is www.connect2dot.org. CDOT's BDP does not include a mentor-protégé program.

Section 9: Monitoring and Enforcement Mechanisms

CDOT monitors construction work sites and relevant documentation to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. At the award of the project, the contractor's DBE participation plan, including work to be performed by each DBE, is sent to the engineer and RCRO. The RCRO reviews subcontract approval requests to ensure that DBE work is consistent with the commitments. The project engineer is also responsible for providing written certification that the contracting records were reviewed and the work sites were monitored to ensure compliance with this part.

CDOT's current standard special provision is provided at <https://www.codot.gov/business/civilrights/dbe/dbe-documents/dbe-standard-special-provision/view>.

CDOT's forms and information submitted via B2G Now provide the data which is entered into its systems in order to provide a running tally of actual DBE utilization (e.g., payments actually made to DBE firms), including a means of comparing utilization to commitments. CDOT's reports include prorated amounts based upon federal funding percentages.

CDOT may enter in a Memorandum of Understand (MOU) to establish roles and responsibilities for the administration of the program on FHWA local agency projects. Unless an MOU has been executed, CDOT is responsible for the following in regards to local agency projects:

- a. Establishing DBE contract goals;
- b. Providing contract language and forms for compliance with the DBE program;
- c. Evaluating good faith efforts of prime contractors prior to contract award;
- d. Approving subcontract requests;
- e. Approving commitment modifications, including DBE terminations and substitutions;
- f. Conducting commercially useful function reviews;
- g. Conducting contract compliance reviews during the project;
- h. Facilitating the resolution of DBE and prompt payment related issues or complaints; and
- i. Providing final approval for project finalization.

Local agency staff are responsible for the day to day oversight of project activities including the performance of DBEs and prompt payment of all subcontractors.

FTA subrecipient compliance is overseen by the Civil Rights and Business Resource Center and CDOT Division of Transit and Rail. Reporting requirements for FTA grant partners and other frequently asked questions can be found in **Subpart G, Exhibit G**.

Ref: 49 CFR 26.37

Section 10: Race-Neutral Small Business Participation

CDOT's Emerging Small Business (ESB) Program is a legislatively authorized, state-funded race-neutral small business program designed to assist emerging small businesses in competing for CDOT construction, professional services and practice of research contracting opportunities. The rules and guidelines governing the administration of the ESB Program can be found at <https://www.codot.gov/business/civilrights/esb/emerging-small-business-program>. FHWA's approval of CDOT's ESB Program as CDOT's race neutral element is provided as **Subpart G, Exhibit H**. Approval from FTA is included as **Subpart G, Exhibit I**.

CDOT continues to implement the ESB Program in good faith. Some of the efforts pursued by CDOT include providing incentive points to firms that utilize Emerging Small Businesses on professional services contracts, restricting projects under \$1,000,000 to bidding by certified ESBs, and providing financial incentives and setting ESB goals on large innovative contracts. Additionally, CDOT is currently working on developing a bond guarantee program.

Ref: 49 CFR 26.39

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 1: Role of Statutory 10% Goal

CDOT acknowledges that the statutes authorizing the DBE Program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs. This 10 percent goal is an aspirational goal at the national level, which USDOT uses as a tool in evaluating and monitoring DBEs' opportunities to participate in contracts. The national 10 percent goal does not authorize or require CDOT to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

Ref: 49 CFR 26.41

Section 2: Use of Set-Asides or Quotas

CDOT does not use set-asides or quotas for DBEs in the administration of its DBE Program.

Ref: 49 CFR 26.43

Section 3: Setting Overall Goals

As necessary, CDOT sets a separate and distinct overall goal for each USDOT funding source: Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). Given the significant differences between the distribution and utilization of these funds, separation of the DBE goals allows CDOT to appropriately tailor the DBE program to the relative industry. When permitted, CDOT may also set program or project overall goals, which will be submitted for review by the applicable operating administration.

CDOT sets its overall goals based upon the relative availability of DBEs in an attempt to generate the DBE participation one would expect absent the effects of discrimination. CDOT's goal methodology for each goal can be found online at <https://www.codot.gov/business/civilrights/dbe/dbemain>. CDOT's overall goals provide for participation by all certified DBEs and are not subdivided into group-specific goals

CDOT reviews and sets its overall goals on the three-year cycles established by FHWA, FTA and FAA, if applicable. FHWA's goal submission schedule can be found at www.fhwa.dot.gov/civilrights/memos/dbememogocycle2010.htm. CDOT submits its goals and the supporting methodology to the applicable DOT operating administration by August 1 of each three-year interval. The overall goal and the provisions of Sec. 26.47(c) apply to each year during the three-year period.

CDOT consults with minority, women's and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and CDOT's efforts to establish a level playing field for the participation of DBEs. Some of these organizations include the Small Business Development Centers, Colorado Contractors Association, Hispanic Contractors of Colorado and Black Construction Group. CDOT documents its consultation as part of its goal setting process.

CDOT publishes a notice announcing its proposed overall goal before submitting it to the operating administration. The notice is posted on CDOT's civil rights website and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the OA, CDOT also posts the revised goal on the website.

CDOT may adjust its three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. CDOT will submit such an adjustment to the concerned operating administration for review and approval. The operating administration may also direct CDOT to undertake review of a goal if necessary to ensure that the goal continues to fit its circumstances appropriately.

Ref: 49 CFR 26.45

Section 4: Failure to Meet Overall Goal

CDOT cannot be penalized for falling short of the overall goal. However, CDOT will be considered in noncompliance if CDOT has failed to implement and administer the DBE program in good faith or does not have an approved DBE program or overall goal.

If the awards and commitments shown on CDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, CDOT will do the following in order to be regarded by USDOT as implementing its DBE program in good faith:

- a. Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year;
- b. Establish specific steps and milestones to correct the problems CDOT identifies in its analysis and to enable it to meet fully its goal for the new fiscal year;
- c. Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (2)(a) and (b) of this section to the appropriate OA for approval. If the OA approves the report, CDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

The OA may impose conditions on CDOT as part of its approval of CDOT's analysis and corrective actions including, but not limited to, modifications to its overall goal methodology, changes in its race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures. CDOT may be regarded as being in noncompliance with 49 CFR Part 26 and therefore subject to the remedies in 49 CFR 26.103 or 26.105 and other applicable regulations, for failing to implement its DBE Program in good faith if CDOT did not submit its analysis and corrective actions to the OA in a timely manner, the OA disapproves CDOT's analysis or corrective actions, or CDOT does not fully implement the corrective actions to which it has committed or conditions that the OA has imposed following review of CDOT's analysis and corrective actions.

If CDOT's Uniform Report of DBE Awards or Commitments and Payments or other information demonstrates that current trends make it unlikely that CDOT will achieve DBE awards and commitments that would be necessary to allow it to meet its overall goal at the end of the fiscal year, the OA may require CDOT to make further good faith efforts, such as modifying its race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Ref: 49 CFR 26.47

Section 5: Transit Vehicle Manufacturers

CDOT, as an FTA recipient, requires that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, certify that it has complied with the requirements of 49 CFR 26.49. CDOT does not include FTA assistance used for procurements from transit vehicle manufacturers in the base amount from which CDOT's overall goal is calculated. Within 30 days of making an award, CDOT's Division of Transit and Rail will submit the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in its grant agreement with FTA.

Ref: 49 CFR 26.49

Section 6: Meeting Annual Overall Goals

CDOT meets the maximum feasible portion of its overall goals using race-neutral methods. Race neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts). The race neutral means CDOT use include, but are not limited to, the following:

- a. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
- b. Providing DBEs with assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing, developing and improving immediate and long term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- c. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- d. Providing services to help DBEs and other small businesses improve long term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self sufficiency;
- e. Focusing on special projects to assist new, start up firms, particularly in fields in which DBE participation has historically been low;
- f. Ensuring distribution of CDOT's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- g. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and
- h. Facilitating relationships between DBEs and contractors through mandatory prebid processes and networking events.

CDOT currently hosts a Small Business Forum in construction and professional services once every quarter. The forum helps develop transparency in CDOT processes for small businesses and also serves as an outlet where small business can express their concerns.

Upon review of its overall goal, CDOT submits its projection of the portion of the overall goal expected to be met through race neutral means and the basis for that projection. CDOT establishes contract goals to meet any portion of its overall goals that it does not project being able to meet using race neutral means, but a contract goal is not required for every DOT-assisted contract. Contract goals may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract.

Over the period covered by its overall goal, CDOT sets contract goals so that they will cumulatively result in meeting any portion of the overall goal CDOT projects not being able to meet through the use of race-neutral means. CDOT's contract goals are established by the RCRO. They are established utilizing an engineer's estimate for construction or scope of work for professional services based upon a consideration of the subcontracting opportunities within the project and the availability of ready and willing DBEs to perform such work. CDOT's contract goals provide for participation by all certified DBEs and are not subdivided into group-specific goals.

CDOT is able to track its progress toward the overall goal through monthly reports on DBE contract awards. To ensure that CDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, CDOT adjust the use of contract goals as necessary. If the approved projection estimates that CDOT can meet its entire overall goal for a given year through race-neutral means, CDOT implements the program without setting contract goals during that year, unless it becomes necessary in order meet the overall goal. If, during the course of any year in which CDOT is using contract goals, CDOT determines that it will exceed the overall goal, CDOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If CDOT determines that it will fall short of its overall goal, then CDOT makes appropriate modifications in its use of race-neutral or race-conscious measures to allow it to meet the overall goal.

If the DBE participation CDOT has obtained by race neutral means alone meets or exceeds CDOT's overall goals for two consecutive years, CDOT will use only race neutral means to meet CDOT's overall goals unless and until CDOT does not meet CDOT's overall goal for a year. If CDOT obtains DBE participation that exceeds CDOT's overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race neutral means alone), CDOT will reduce CDOT's use of contract goals proportionately in the following year. In any year in which CDOT projects meeting part of CDOT's goal through race neutral means and the remainder through contract goals, CDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively, and CDOT will report this data to the concerned OA as provided in 49 CFR 26.11.

Ref: 49 CFR 26.51

Section 7: Good Faith Efforts Processes

When CDOT has established a DBE contract goal, CDOT may only award the contract to a bidder that makes good faith efforts to meet it. A bidder has made good faith efforts if the bidder either documents that it has obtained enough DBE participation to meet the goal or that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the

bidder documents adequate good faith efforts, CDOT will not deny award of the contract on the basis that the bidder failed to meet the goal. CDOT uses Appendix A to 49 CFR Part 26 as a guideline in determining whether a prime has made good faith efforts. Additionally, CDOT provides as additional guidance to primes at

<https://www.codot.gov/business/civilrights/dbe/good-faith-effort-guidance-construction-projects>.

All CDOT solicitations for DOT-assisted construction contracts include CDOT's Standard Special Provision, Disadvantaged Business Enterprise Requirements, and CDOT's Project Special Provision, Disadvantaged Business Enterprise (DBE) Contract Goal. The Project Special Provision designates the DBE goal for the contract and can be found at

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/project-special-provision-work-sheets/dbecg.docx/view>.

The Standard Special Provision outlines the good faith effort requirements for award. The Standard Special Provision also outlines the requirements for ongoing good faith efforts during the contract including procedures for termination and substitution of DBEs as outlined in 49 CFR 26.53. It is available at

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/rev-ssp/rev-misc/dbe.docx/view>.

The Standard Special Provision was most recently revised on July 3, 2017.

All CDOT solicitations for DOT-assisted professional services contracts include terms that outline the pre-award good faith effort requirements. The operating agreement for services outlines references the compliance criteria for consultants. A copy of these terms is attached as **Subpart G, Exhibit F**. Because professional services contracts are negotiated procurements, good faith effort documentation is not required at the time of solicitation. However, all proposers must provide an affidavit committing to meet the goal or make good faith efforts to do so.

Special processes apply to innovative contracts (i.e. design-build, construction manager/general contractor, and public private partnerships). CDOT has written unique provisions for CM/GC, Design-Build and Public Private Partnerships. These terms are included in the Request for Proposals which is subject to FHWA approval.

Preaward good faith effort reviews for construction contracts, fund encumbered professional services contracts and innovative contracts are conducted by the Civil Rights and Business Resource Center . For on call professional services contracts, preaward good faith effort reviews are conducted by the RCRO. During the course of the project, good faith efforts are also overseen by the RCRO. The procedures for termination and substitution are set forth in the relevant contracting documents.

CDOT does provide for administrative reconsideration of the good faith efforts determinations. For construction, innovative projects, and fund encumbered professional services contracts, the administrative reconsideration is conducted by the Chief Engineer. A copy of this process is attached as **Subpart G, Exhibit J**. Task order good faith effort and sanctions determinations may be appealed to the Regional Transportation Director.

The good faith efforts processes outlined in this Section also apply to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offer for a prime contract has met a contract goal, CDOT will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Section 9: Counting DBE Participation Toward Goals

CDOT counts DBE participation in accordance with 26.55, with the exception that CDOT does not permit any credit for non-DBE leased trucks as allowed under 26.55(d)(5).

When a DBE participates in a contract, CDOT only counts the value of the work actually performed by the DBE toward DBE goals. For construction contracts this includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate). Additionally, CDOT counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provide the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. When a DBE performs as a participant in a joint venture, CDOT counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.

CDOT counts expenditures toward DBE goals only if the DBE is performing a commercially useful function on that contract. 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 actually 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, CDOT 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 actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, CDOT must examine similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, CDOT must presume that it is not performing a commercially useful function.

A DBE trucking company must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE receives credit for the total value of the

transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. CDOT does not permit additional non-DBE trucks to count toward the DBE goal.

The CDOT Regional Civil Rights Offices are responsible for overseeing DBE performance and performing commercially useful functions reviews. When CDOT determines a DBE is not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. CDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. CDOT's decisions on commercially useful function matters are subject to review by the concerned OA, but are not administratively appealable to DOT.

CDOT determines the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis. For purposes of counting, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers. CDOT considers a DBE which is neither a manufacturer nor a regular dealer, to be a broker. If CDOT determines such fees are reasonable, CDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals. If a firm is acting as a broker, CDOT does not count any portion of the cost of the materials and supplies themselves toward DBE goals.

A DBE firm must be certified in the work to be performed at the time of commitment and contract in order to count toward the DBE goal. When a prime contractor has made a commitment to using a DBE firm, or CDOT has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the firm is decertified, the ineligible firm cannot count toward the contract goal or overall goal. The prime contractor must replace the ineligible firm with an eligible DBE firm or demonstrate to CDOT that it has made a good faith effort to do so. If a prime contractor has executed a subcontract with a firm before it is notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where CDOT let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of ineligibility shall not count toward CDOT's overall goal, but may count toward the contract goal. However, if the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, CDOT and the prime may continue to count its participation on that contract toward overall and contract goals.

If a DBE is suspended, the DBE cannot count toward the contract goal on any new contracts. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of

Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

All amounts must be paid to the DBE, including release of retainage, to count toward the DBE goal. CDOT tracks payments to DBEs through the payment submissions in B2G Now. For older contracts, CDOT also captures the information via Form 1313 for professional services contracts or Forms 1418 and 1419 for construction contracts.

CDOT's counting requirements are set out in the DBE Standard Special Provision at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/rev-ssp/rev-misc/dbe.docx/view> or the professional services language in **Subpart G, Exhibit F**.

Ref: 49 CFR 26.55, 26.87 and 26.88

SUBPART D – DBE CERTIFICATION APPLICATION AND STANDARDS

Section 1: Burdens of Proof

Firms seeking certification have the burden of demonstrating to CDOT, by a preponderance of the evidence, that the firm and/or its owners meet the requirements of 49 CFR 26, Subpart D concerning group membership, individual disadvantage, business size, ownership, and control.

When an individual submits a signed, notarized statement that he or she is a member of one of the groups in 49 CFR 26.67(a), CDOT will rebuttably presume that such individual is socially and economically disadvantaged. However, applicants do have the obligation to provide CDOT with information concerning their economic disadvantage. Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to CDOT, by a preponderance of the evidence, that they are socially and economically disadvantaged.

CDOT will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Ref: 49 CFR 26.61

Section 2: Group Membership

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group, CDOT has a well-founded reason to question the individual's claim of membership in that group, CDOT will require the individual to present additional evidence that he or she is a member of the group. CDOT will provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence. In implementing this section, CDOT will take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.

In determining a group membership classification, CDOT will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. CDOT may require the applicant to produce appropriate documentation of group membership.

If CDOT determines that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis. CDOT's decisions concerning membership are subject to appeal.

Ref: 49 CFR 26.63

Section 3: Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. CDOT applies current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT assisted

contracts, including the primary industry of the applicant. Even if a firm meets the SBA size standards, it shall not be an eligible DBE if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million, or the current threshold as determined by USDOT.

Ref: 49 CFR 26.65

Section 4: Determination of Social and Economic Disadvantage

CDOT rebuttably presumes that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals provided that the applicant has submitted a notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

CDOT requires each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million. This certification must be supported with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, CDOT uses the DOT personal net worth form which is available at [\[link\]](#). Where necessary to accurately determine an individual's personal net worth, CDOT may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). However, such requests for additional information shall not be unduly burdensome or intrusive.

Notwithstanding any provision of Federal or State law, CDOT will not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. CDOT will transmit this information to DOT in any certification appeal proceeding under 49 CFR 26.89 or to any other State to which the individual's firm has applied for interstate certification.

In determining an individual's net worth, CDOT:

- a. Excludes the individual's ownership interest in the applicant firm;
- b. Excludes the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. CDOT includes home equity loan balances in the equity calculation and not as a separate liability on the individual's personal net worth form;
- c. Does not use contingent liabilities to reduce an individual's net worth; and
- d. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, includes only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

CDOT attributes to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of CDOT's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support. However, CDOT does not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

An individual's presumption of economic disadvantage may be rebutted if the statement of personal net worth and supporting documentation shows that the individual's personal net worth exceeds \$1.32 million. CDOT is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.

An individual's presumption of economic disadvantage may also be rebutted if the statement of personal net worth and supporting documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, as a certifying agency, CDOT may consider factors that include, but are not limited to:

- a. Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- b. Whether the income was unusual and not likely to occur in the future;
- c. Whether the earnings were offset by losses;
- d. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- e. Other evidence that income is not indicative of lack of economic disadvantage; and
- f. Whether the total fair market value of the owner's assets exceed \$6 million.

The exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes. CDOT must have a proceeding in order to rebut the presumption of economic disadvantage when the \$1.32 million threshold has not been met but the individuals otherwise demonstrates an ability to accumulate substantial wealth. .

If CDOT has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged CDOT may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. CDOT's proceeding follow the procedures of 49 CFR 26.87. CDOT has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. CDOT may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot

regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. CDOT must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to CDOT, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, CDOT uses the guidance found in Appendix E of 49 CFR part 26. CDOT requires that applicants provide sufficient information to permit determinations under the guidance of Appendix E of 49 CFR part 26.

Ref: 49 CFR 26.67

Section 5: Determination of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, CDOT will consider all the facts in the record, viewed as a whole.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if –

- a. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
- b. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions

include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

in situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership the owner's expertise must be in a specialized field, of outstanding quality, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm. Additionally, the individual whose expertise is relied upon must have a significant financial investment in the firm.

CDOT will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual:

- a. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- b. Through inheritance, or otherwise because of the death of the former owner.

CDOT will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non disadvantaged individual or non DBE firm who is involved in the same firm for which the individual is seeking certification, or an affiliate of that firm, involved in the same or a similar line of business, or engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to CDOT, by clear and convincing evidence, that the gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE and the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non disadvantaged individual who provided the gift or transfer.

When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, CDOT will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. CDOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

CDOT may consider the following factors in determining the ownership of a firm. However, CDOT will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- a. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;
- b. There is a provision for the co signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- c. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, CDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Ref: 49 CFR 26.69

Section 6: Determination of Control

In determining whether socially and economically disadvantaged owners control a firm, CDOT will consider all the facts in the record, viewed as a whole.

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, CDOT will scrutinize relationships with non DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. CDOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non DBE firms or persons associated with non DBE firms compromise the independence of the potential DBE firm. CDOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. CDOT will consider the consistency of relationships between the potential DBE and non DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co signature on documents as provided for in 49 CFR 26.69(j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day to day as well as long term decisions on matters of management, policy and operations. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the CDOT can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, CDOT will not deny certification solely on the ground that the person lacks the license or credential. However, CDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

CDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. CDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, CDOT may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part time work in a full time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, CDOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as CDOT does in other situations, without regard to whether or not the other persons are immediate family members. If CDOT cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to CDOT, by clear and convincing evidence, that the transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE and the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, CDOT may consider whether the firm owns equipment necessary to perform its work. However, CDOT will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

CDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to CDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. CDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but CDOT will verify the disadvantaged owner's control of the firm in the additional type of work. The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described via work codes that include the most specific available NAICS code for that type of work with an additional Census index descriptor.

Firms and CDOT must check carefully to make sure that the work codes are kept up-to-date and accurately reflect work which the CDOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information CDOT needs to make an appropriate work code designation. If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that CDOT, in its certification

documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and CDOT will rely on such a description in determining whether a firm's participation can be counted toward DBE goals. CDOT is not precluded from changing a certification classification or description if there is a factual basis in the record. However, CDOT will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, CDOT will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Ref: 49 CFR 26.71

Section 7: Other Rules Affecting Certification

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (2) of this section, CDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

CDOT may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

CDOT evaluates the eligibility of a firm on the basis of present circumstances. CDOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

CDOT will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of 49 CFR Part 26, the firm is eligible for certification.

DBE firms and firms seeking DBE certification shall cooperate fully with CDOT requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

Only firms organized for profit may be eligible DBEs. Not for profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm) cannot be an eligible DBE. If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, CDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company. CDOT may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

CDOT will not require a DBE firm to be prequalified as a condition for certification unless CDOT requires all firms that participate in its contracts and subcontracts to be prequalified.

A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR 26.71.

In regards to Alaska Native Corporations (ANCs), notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

- a. The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
- b. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

- c. The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

As a recipient to whom an ANC-related entity applies for certification, CDOT will not use the USDOT uniform application form. CDOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements. If an ANC-related firm does not meet all the conditions above, then it must meet the same requirements as firms owned by Indian Tribes or Native Hawaiian Organizations.

Ref: 49 CFR 26.73

SUBPART E – CERTIFICATION PROCEDURES

Section 1: Colorado Unified Certification Program (UCP)

CDOT participates in, and is a certifying and Executive Committee member, of the Colorado Unified Certification Program (UCP). The Colorado UCP Plan specifies that the UCP will follow all certification procedures and standards of 49 CFR Part 26 on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its OAs; and that the UCP shall implement USDOT directives and guidance concerning certification matters. The agreement also commits recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

The UCP makes all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the DOT DBE Program. Certification decisions by the UCP are binding on all USDOT recipients within the state. The UCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state. To apply for DBE certification with the Colorado UCP, a firm must be certified in its home state. In order for a DBE to count, a certification decision by the Colorado UCP must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

The Colorado UCP Plan was submitted to FHWA and USDOT and approved on April 5, 2004. The Colorado UCP Plan was recently revised and the most current revision of the plan can be found **Subpart G, Exhibit K**.

Ref: 49 CFR 26.81

Section 2: Procedures in Making Certification Decisions

Only firms that are certified by the Colorado UCP will be eligible participate as DBEs in CDOT’s program. As a certifying member of the UCP, CDOT determines the eligibility of firms as DBEs consistent with the standards of 49 CFR 29 Subpart D. CDOT takes the following steps in determining whether a DBE firm meets the standards of subpart D of this part;

- a) Performs an on site visit to the offices of the firm. CDOT uses a standard template that may be modified for the particular interview. CDOT interviews the principal officers of the firm and reviews their resumes and/or work histories. CDOT also performs an on site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in CDOT’s jurisdiction or local area, and such a visit is feasible. CDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- b) Analyzes documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate bylaws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;
- c) Analyzes the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
- d) Determines the work history of the firm, including contracts it has received, work it has completed; and payroll records;

- e) Obtains a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
- f) Obtains or compiles a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- g) Obtains complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service;
- h) Requires potential DBEs to complete and submit an appropriate application form, except as otherwise provided in 49 CFR 26.85.

CDOT uses the application form required by 49 CFR 26, Appendix F. CDOT does not charge an application fee. CDOT's application can be accessed online at <https://cdot.dbesystem.com/>. To submit the application, the applicant must attest to the accuracy and truthfulness of the information on the application form by an unsworn declaration executed under penalty of perjury of the laws of the United States. CDOT reviews all information on the application form prior to making a decision about the eligibility of the firm. CDOT may request clarification of information contained in the application at any time in the application process.

When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information, CDOT promptly makes the information available to the other recipient. However, CDOT safeguards from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once CDOT has certified a DBE, it remains certified until CDOT removes its certification, in whole or in part, through the procedures of 49 CFR 26.87, except as provided in 49 CFR 26.67(b)(1). CDOT may not require DBEs to reapply for certification or undergo a recertification process. However, CDOT may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to CDOT's attention that leads CDOT to question the firm's eligibility, CDOT may conduct an on-site review on an unannounced basis, at the firm's offices and job site. CDOT's UCP partner currently conducts three year reviews of DBEs. CDOT intends to adopt this process in the coming year.

Firms that are certified by CDOT are required to notify CDOT in writing of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application. This includes changes in management responsibility among members of a limited liability company. When providing notice to CDOT, the DBE must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States and must be provided within 30 days of the occurrence of the change. If a DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

Firms that are certified by CDOT must update their certification every year by the last day of the month of the anniversary of certification. Annual update applications must be submitted via the B2G Now system at <https://cdot.dbesystem.com/>. While these are called applications in the B2GNow System, the firm is only updating, not reapplying, for certification. CDOT sends an automatic reminder to all firms at the last known email address.

The annual update application includes an unsworn declaration executed under penalty of perjury of the laws of the United States by the owner of the firm affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has previously notified CDOT as provided above. The owner must also affirm that the firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the firm's size and gross receipts (e.g., submission of Federal tax returns). If a DBE fails to provide this affidavit in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

CDOT must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. CDOT may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. CDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT.

CDOT must advise each applicant within 30 days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. If no additional information is required, CDOT will "receive" the application in the online system. If additional information is required, CDOT may return the application to the applicant to be updated or send a Q&A to request additional information from the applicant.

Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before CDOT has issued a decision on the application, the applicant can resubmit the application at any time. However, the reapplication will be placed at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. CDOT may apply a one year waiting period to a firm that has established a pattern of frequently withdrawing applications before CDOT makes a decision.

If a firm is non-responsive, CDOT may either issue of determination or close the application. If CDOT closes the application, the application will be placed at the end of the queue when the additional information is received. There is no waiting period when CDOT has closed an application.

Section 3: Interstate Certification

This section applies with respect to any firm that is currently certified in a home state outside Colorado. CDOT does not accept applicants not certified in their home state. All applicants certified in their home state are considered interstate applicants and must submit the following documentation via the Interstate Application in B2GNow at <https://cdot.dbesystem.com/>.

When a firm currently certified in its home state applies to CDOT for DBE certification, the applicant must provide to CDOT a complete copy of the application form, all supporting documents, and any other

information it has submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change (see 49 CFR 26.83(j)) and any notices of changes (see 49 CFR 26.83(i)) that it has submitted to the home state, as well as any correspondence it has had with the home state's UCP or any other recipient concerning its application or status as a DBE firm. The applicant must also provide to CDOT any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, if the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform CDOT of this fact and provide all documentation concerning this action to CDOT. If the applicant has filed a certification appeal with DOT (see 49 CFR 26.89), it must inform CDOT of the fact and provide its letter of appeal and DOT's response to CDOT.

In order to submit the application, the firm's owners provide an unsworn declaration executed under penalty of perjury of the laws of the United States affirming that the firm has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by 49 CFR 26.85(c)(1), is an identical copy of the information submitted to the home state. If the on-site report from the home state supporting a firm's certification in the home state is more than three years old, as of the date of its application to CDOT, CDOT may require the owner to also affirm that the facts in the on-site report remain true and correct.

When CDOT receives an interstate application, within seven days CDOT must contact the home state and request a copy of the site visit review report for the firm (see 49 CFR 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As the home state, CDOT must transmit this information to a requesting state within seven days of receiving the request. A pattern by a state of not making such requests in a timely manner or by not complying with such requests in a timely manner is noncompliance.

CDOT must then determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in Colorado. Reasons for making such a determination may include the following:

- a) Evidence that the home state's certification was obtained by fraud;
- b) New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
- c) The home state's certification was factually erroneous or was inconsistent with the requirements of this part;
- d) Colorado law requires a result different from that of the law of the home state; and
- e) The information provided by the applicant firm did not meet the requirements of 49 CFR Part 26.

Unless CDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Colorado, CDOT will, no later than 60 days from the date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.

If CDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Colorado, CDOT will, no later than 60 days from the date on which it receives from the all information required under 49 CFR Part 26, send to the applicant firm a notice stating the reasons for its determination. This notice will state with particularity the specific reasons why CDOT believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity

to respond to CDOT with respect to these reasons. The firm may elect to respond in writing, to request an in-person meeting with CDOT's decision maker to discuss CDOT's objections to the firm's eligibility, or both. If the firm requests a meeting, CDOT will schedule the meeting to take place within 30 days of receiving the firm's request. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of 49 CFR Part 26 with respect to the particularized issues raised by CDOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to CDOT. The decision maker for CDOT will be an individual who is thoroughly familiar with the provisions concerning certification. CDOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89.

If CDOT does not receive from the home state a copy of the site visit review report within 14 days after it has made a timely request for it, CDOT may withhold action pending receipt of the site visit review report. In this event, CDOT will, no later than 30 days from the date on which it received all the information required by 49 CFR Part 26, notify the firm in writing of the delay in the process and the reason for it.

When CDOT denies a firm's application, rejects the application of the home state or any other State in which the firm is certified, or decertifies a firm, in whole or in part, CDOT will make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. CDOT will enter the following information:

- a) The name of the firm;
- b) The name(s) of the firm's owner(s);
- c) The type and date of the action; and
- d) The reason for the action.

CDOT will check the DOCR Web site at least once every month to determine whether any firm that is applying to it for certification or that it has already certified is on the list. For any such firm that is on the list, CDOT will promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, CDOT will provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, CDOT will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Ref: 49 CFR 26.85

Section 4: Denials of Initial Requests for Certification

When CDOT denies a request by a firm, which is not currently certified with CDOT, to be certified as a DBE, CDOT will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.

When CDOT denies a firm's certification, the firm may not reapply until 12 months have passed from CDOT's action. The time period for reapplication begins to run on the date the explanation for denial is received by the applicant. Additionally, per the Colorado UCP Plan, the firm must reapply with CDOT within the three years following denial or revocation. It cannot apply with the City and County of Denver during such time.

When CDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under 49 CFR 26.89. Appeals to USDOT do not stay the waiting period.

Ref: 49 CFR 26.86

Section 5: Removing a DBE's Eligibility

Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. CDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities will be protected consistent with 49 CFR Part 26.

Upon receipt of a complaint, CDOT will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. CDOT may request additional information from the firm or conduct any other investigation that CDOT deems necessary.

If CDOT determines that there is reasonable cause to believe that the firm is ineligible, CDOT will provide written notice to the firm that it intends to revoke certification and the reasons for the proposed revocation. If CDOT determines that reasonable cause does not exist, CDOT will notify the complainant and the firm in writing of this determination and the reasons for it. The intent to revoke will specifically reference the evidence in the record on which each reason is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to CDOT's attention, CDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, CDOT will notify the firm that it intends to revoke certification and the reasons for the proposed revocation. The intent to revoke will specifically reference the evidence in the record on which each reason is based.

If the concerned operating administration determines that information in the certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm CDOT certified does not meet the eligibility criteria of this part, the concerned operating administration may direct CDOT to initiate a proceeding to remove the firm's certification. The concerned operating administration must provide CDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. CDOT will immediately commence and prosecute a proceeding to remove eligibility.

When CDOT notifies a firm that there is reasonable cause to remove its eligibility, CDOT will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, CDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part. CDOT must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to USDOT, CDOT must provide a transcript of the hearing to DOT and, on request, to the firm. CDOT must retain the original record of the hearing. CDOT may charge the firm only for the cost of copying the record. DBE firms may elect to present information and

arguments in writing, without going to a hearing. In such a situation, CDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.

CDOT must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. It is CDOT policy to hire an outside attorney or specialist who is knowledgeable about the certification requirements of the DBE program.

CDOT may base a decision to remove a firm's eligibility only on one or more of the following grounds:

- a) Changes in the firm's circumstances since the certification of the firm by CDOT that render the firm unable to meet the eligibility standards of this part;
- b) Information or evidence not available to CDOT at the time the firm was certified;
- c) Information relevant to eligibility that has been concealed or misrepresented by the firm;
- d) A change in the certification standards or requirements since CDOT certified the firm;
- e) CDOT's decision to certify the firm was clearly erroneous;
- f) The firm has failed to cooperate (see 49 CFR 26.109(c));
- g) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see 49 CFR 26.73(a)(2)); or
- h) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

Following its decision, CDOT will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the decision and of the availability of an appeal to USDOT. CDOT will send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed CDOT to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, CDOT must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the final decision. When CDOT makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to USDOT.

When a prime contractor has made a commitment to using a DBE firm, or CDOT has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before the firm is decertified, the ineligible firm cannot count toward the contract goal or overall goal. The prime contractor must replace the ineligible firm with an eligible DBE firm or demonstrate to CDOT that it has made a good faith effort to do so. If a prime contractor has executed a subcontract with a firm before it is notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where CDOT let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of ineligibility shall not count toward CDOT's overall goal, but may count toward the contract goal. However, if the DBE's ineligibility is caused solely by its

having exceeded the size standard during the performance of the contract, CDOT and the prime may continue to count its participation on that contract toward overall and contract goals.

Ref: 49 CFR 26.87

Section 6: Summary Suspension of Certification

CDOT will immediately suspend a DBE's certification without adhering to the requirements in 49 CFR 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. CDOT may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify CDOT or UCP in writing of any material change in circumstances or fails to timely file an annual update. In determining the adequacy of the evidence to issue a suspension of this section, CDOT shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

The concerned operating administration may direct CDOT to take action if it determines that information available to it is sufficient to warrant immediate suspension. When a firm is suspended, CDOT will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR 26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to CDOT information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, CDOT must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If CDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE is not appealable to the US Department of Transportation. The failure of CDOT to either lift the suspension and reinstate the firm or commence a decertification proceeding is appealable to the U.S. Department of Transportation under 49 CFR 26.89 of this part, as a constructive decertification.

Section 7: Appealing Certification Decisions to the USDOT

A firm that is denied certification or whose eligibility is removed by CDOT may make an administrative appeal to CDOT. Additionally, a complainant of an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in 49 CFR 26.87(c)), may appeal to USDOT if CDOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible. Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

Pending the Department's decision in the matter, CDOT's decision remains in effect. USDOT does not stay the effect of CDOT's decision while it is considering an appeal.

Appeals must be sent within 90 days of the date of CDOT's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that CDOT failed to consider, or what provisions of this Part CDOT did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if USDOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

When it receives an appeal, USDOT requests a copy of CDOT's complete administrative record in the matter. CDOT will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. USDOT may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, CDOT must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to CDOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

USDOT makes its decision based solely on the entire administrative record as supplemented by the appeal. USDOT does not make a de novo review of the matter and does not conduct a hearing. USDOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

When CDOT provides supplementary information to USDOT, it will also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source. USDOT affirms CDOT's decision unless it determines, based on the entire administrative record, that CDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

If USDOT determines, after reviewing the entire administrative record, that CDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, USDOT reverses CDOT's decision and directs CDOT to certify the firm or remove its eligibility, as appropriate. CDOT must take the action directed by the Department's decision immediately upon receiving written notice of it. USDOT is not required to reverse CDOT's decision if

USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to CDOT with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part. USDOT does not uphold CDOT's decision based on grounds not specified in your decision. The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). USDOT will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If USDOT does not make its decision within this period, USDOT provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Ref: 49 CFR Part 26.89

Section 8: Effect of USDOT Certification Appeal Decisions

An appeal based upon CDOT's action is only binding on CDOT. Appeals based on the actions of other recipients are not binding on CDOT. When an action is binding on CDOT, CDOT will:

- a) if USDOT determines that CDOT erroneously certified a firm, remove the firm's eligibility on receipt of the determination, without further proceedings. Effective on the date of receipt of USDOT's determination, the consequences of a removal of eligibility take effect.
- b) If USDOT determines that CDOT erroneously failed to find reasonable cause to remove the firm's eligibility, expeditiously commence a proceeding to determine whether the firm's eligibility should be removed.
- c) If USDOT determines that CDOT erroneously declined to certify or removed the eligibility of the firm, certify the firm, effective on the date of receipt of the written notice of Department's determination.
- d) If USDOT determines that CDOT erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, take appropriate corrective action as determined by the Department.

If USDOT affirms CDOT's determination, no further action is necessary.

Where USDOT has upheld CDOT's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a

proceeding to remove the firm's eligibility under 49 CFR 26.87. Recipients cannot remove the firm's eligibility absent such a proceeding. Where USDOT has reversed CDOT's denial of certification to or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT's decision.

Ref: 49 CFR 26.91

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 1: Compliance Procedures Which Apply to CDOT

If CDOT fails to comply with any requirement of this part, CDOT may be subject to formal enforcement action under 49 CFR Parts 26.103 or 105 or appropriate program sanctions by the concerned OA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

As provided in statute, CDOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because CDOT has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Ref: 49 CFR 26.101

Section 2: Enforcement Actions under FHWA and FTA

Any person who believes that a recipient has failed to comply with its obligations may file a written complaint with the concerned OA's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in 49 CFR Part 26.109. Complaints under this part are limited to allegations of violation of the provisions of this part.

The concerned OA may review CDOT's compliance with this part at any time, including reviews of paperwork and on site reviews, as appropriate. The Office of Civil Rights may direct the OA to initiate a compliance review based on complaints received.

If it appears, from the investigation of a complaint or the results of a compliance review, that CDOT, as a recipient, is in noncompliance with this part, the appropriate DOT office promptly sends CDOT, return receipt requested, a written notice advising CDOT that there is reasonable cause to find CDOT in noncompliance. The notice states the reasons for this finding and directs CDOT to reply within 30 days concerning whether CDOT wishes to begin conciliation.

If CDOT requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of CDOT's request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes. If CDOT and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed, and CDOT is regarded as being in compliance. The conciliation agreement sets forth the measures CDOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, CDOT remains eligible for FHWA or FTA financial assistance. The concerned OA shall monitor CDOT's implementation of the conciliation agreement and ensure that its terms are complied with. If CDOT fails to carry out the terms of a conciliation agreement, CDOT is in noncompliance.

If CDOT does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

Ref: 49 CFR 26.103

Section 3: Enforcement Actions in FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them. The provisions of 49 CFR 26.103 (b) and this section apply to enforcement actions in FAA programs. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Ref: 49 CFR 26.105

Section 4: Enforcement Actions for Participants in the DBE Program

If a firm that does not meet the eligibility criteria attempts to participate in a CDOT's DBE Program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria, USDOT may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

In a suspension or debarment proceeding, the concerned OA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude USDOT from determining that the

purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31.

USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any program or otherwise violates applicable Federal statutes.

Ref: 49 CFR 26.107

Section 5: Confidentiality, Cooperation, and Intimidation or Retaliation

CDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Colorado Open Records Act allows CDOT to protect certain records from inspection or disclosure, including contractor records that are privileged or confidential information, etc. Notwithstanding any contrary provisions of state or local law, CDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

In responding to requests for information concerning any aspect of the DBE program, USDOT complies with provisions of the Federal Freedom of Information (5 U.S.C. 552) and Privacy Acts (5 U.S.C. 552a). USDOT may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, CDOT will not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, CDOT will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR 26.85.

Notwithstanding the provisions above, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR Part 16 with respect to confidentiality of information in complaints.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with

respect to a contractor which uses DBE firms to meet goals, findings of non responsibility for future contracts and/or suspension and debarment).

If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Ref: 49 CFR 26.109

EXHIBIT A

March 4, 2018 FHWA DBE Program Plan Approval



U.S. Department
of Transportation
**Federal Highway
Administration**

Colorado Division

March 14, 2018

12300 W. Dakota Ave., Suite #180
Lakewood, Colorado 80228
720-963-3000

Michael P. Lewis
Executive Director
Colorado Department of Transportation
4201 E. Arkansas Avenue
Denver, Colorado 80222

Subject: Disadvantaged Business Enterprise (DBE) program plan

Dear Mr. Lewis:

I am pleased to advise you that the DBE program plan for the State of Colorado is approved per 49 CFR 26.21(b). FHWA's review has verified that the DBE program plan submitted by CDOT on 12/01/2017 contains all elements required under 49 CFR Part 26.

The DBE program plan is a living document and minor updates can be made to the program plan without FHWA approval, as long as CDOT remains in compliance. However, per 49 CFR 26.21(b)(2), any significant changes in the program plan must be submitted to FHWA for approval.

The Colorado Division and the Civil Rights Business Resource Center staff thanks you for CDOT's diligence and effort in getting this program plan to the approval state.

Sincerely,

John M. Cater, P.E.
Division Administrator

EXHIBIT B

Memorandum of Understanding for FTA Recipients



COLORADO DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
SUBRECIPIENT MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into as of _____, 2015, by and between _____ (Subrecipient) and the Colorado Department of Transportation (CDOT).

WHEREAS, CDOT and Subrecipient are both direct recipients of federal funds from the United States Department of Transportation (USDOT) or a USDOT modal operating administration; and

WHEREAS, pursuant to 49 CFR Part 26, Subrecipient has a Disadvantaged Business Enterprise (DBE) Program Plan that was approved by _____ on _____ and valid until _____; and

WHEREAS, via a grant or other agreement CDOT also distributes USDOT funds to Subrecipient; and

WHEREAS, the guidance issued by USDOT provides that a direct recipient and subrecipient with a USDOT-approved plan may enter into an agreement whereby funds allocated to the subrecipient shall be incorporated into the subrecipient's DBE program and deducted from the base of the direct recipient's program (See FHWA Q & A 26.21, Posted 6/18/08); and

WHEREAS, CDOT and Subrecipient desire to enter into such agreement;

NOW THEREFORE, CDOT and Subrecipient agree to the following:

- Subrecipient will incorporate all USDOT funds received from CDOT in its reporting to the applicable USDOT operating administration and CDOT will reduce its base for reporting and goal calculations by the total amount of such funds;
- Subrecipient will continue to maintain a USDOT-approved DBE Program Plan and to set overall annual goals and contract goals in accordance with such plans;
- Subrecipient will provide CDOT with a copy of its semi-annual DBE report prior to June 1 and December 1 of each year;
- Subrecipient will monitor DBE compliance on USDOT-assisted projects and will provide CDOT's designated liaison with DBE reports and information upon request; and
- Subrecipient will promptly notify CDOT of concerns or complaints relating to subrecipient's DBE program or to DBE participation on USDOT-assisted projects.

This MOU sets forth the intent of the signatories hereto. This MOU may be executed in counterparts, each of which is an original and constitutes the same instrument. This MOU shall expire upon termination of Subrecipient's USDOT-approved DBE program.

SUBRECIPIENT

By: _____

Date: _____

Name: _____

Title: _____

COLORADO DEPARTMENT OF TRANSPORTATION

By: _____

Date: _____

Greg Diehl, CDOT DBE Liaison

EXHIBIT C
Policy Directive 604.0

STATE OF COLORADO

DEPARTMENT OF TRANSPORTATION
Office of Government Relations
4201 East Arkansas Avenue, Room 275
Denver, Colorado 80222
(303) 757-9772



To: All CDOT Employees

From: Heidi Humphreys – DAS / Herman Stockinger – OPGR / Katherine Williams - CRBRC

Re: Policy Directive 604.0 “Policy on Non-Discrimination”

Date: January 27, 2014

Background Policy Directive 604.0 “Policy on Non-Discrimination” updates Policy Directive 604.0 “Non-Discrimination in Federally Funded Programs Policy,” adopted July 7, 2004.

Rationale for Policy Directive Outlines CDOT’s general non-discrimination policy for all CDOT programs and activities. Also identifies and describes the forms of discrimination that are prohibited by federal law and highlights objectives related to access for persons with disabilities, access for persons with limited English proficiency, principles of environmental justice, and fair competition for federally funded contracts. This directive does not include CDOT’s Equal Employment Opportunity policy, which is set forth in Policy Directive 600.0.

Individuals/Entities Impacted in Policy Directive This Policy Directive applies to all operations of CDOT, including all offices, divisions, regions, and branches of CDOT, its contractors and anyone who acts on CDOT’s behalf. This Policy Directive also applies to the operations of any department or agency to which CDOT extends federal financial assistance. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

Implementation The Division of Administrative Services (DAS), Civil Rights and Business Resource Center shall implement this directive.

Effective Date January 22, 2014

Review Date On or before January 2019

COLORADO DEPARTMENT OF TRANSPORTATION		<input checked="" type="checkbox"/> POLICY DIRECTIVE <input type="checkbox"/> PROCEDURAL DIRECTIVE
Subject POLICY ON NON-DISCRIMINATION		Number 604.0
Supersedes 604 (7/1/04) 611 (4/15/10)	Effective 1.22.14	Originating Office Civil Rights & Business Resource Center, Division of Administrative Services

I. Purpose

To ensure that no person shall, on the ground of race, color, national origin, sex, disability, or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in the operations of the Colorado Department of Transportation (“CDOT”) or of any department or agency to which CDOT extends federal financial assistance.

II. Authority

See Appendix A. This Policy Directive is intended to meet Federal Highway Administration and Federal Transit Authority requirements.

III. Applicability

This Policy Directive applies to all operations of CDOT, including all offices, divisions, regions, and branches of CDOT, its contractors and anyone who acts on CDOT’s behalf. This Policy Directive also applies to the operations of any department or agency to which CDOT extends federal financial assistance. Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance.

IV. Policy

1. It is CDOT’s policy that no person shall on the ground of race, color, national 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 or of any department or agency to which CDOT extends federal financial assistance.

A. Examples of prohibited types of discrimination based on race, color, national origin, sex, disability, or age include:

- (1) Denial to an individual any service, financial aid, or other benefit;
- (2) Distinctions in the quality, quantity, or manner in which a benefit is provided;
- (3) Segregation or separate treatment;
- (4) Restriction in the enjoyment of any advantages, privileges, or other benefits provided;

(5) Discrimination in any activities related to highway and infrastructure or facility built or repaired; and

(6) Discrimination in employment.

B. Prohibited discrimination may be intentional or unintentional. Seemingly neutral acts that have disparate impacts on individuals of a protected group and lack a substantial legitimate justification are a form of prohibited discrimination. Instances where seemingly neutral acts may result in discrimination include:

(1) Utilizing criteria or methods of administration that have the effect of subjecting persons to discrimination or have the purpose or effect of substantially reducing the likelihood that persons can benefit from the objectives of a program or activity with respect to persons;

(2) Using different standards or requirements for determining whether a person satisfies any admissions, enrollment, quota, eligibility, membership, or other requirement for any service, financial aid, or other benefit; and

(3) Determining the site or location of a facility that has the effect of excluding persons, denying them the benefits of, or otherwise subject to them discrimination.

C. Harassment and retaliation are also forms of discrimination. Harassment includes a wide range of abusive and humiliating verbal or physical behaviors that are directed against a particular person because of race, color, national origin, sex, disability, or age. This Policy Directive prohibits retaliation against any person because he or she has reported alleged discrimination under this Policy Directive or has testified, assisted or participated in any manner in an investigation of such report, or has opposed such discrimination. No one shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with their rights against discrimination.

D. As part of this Policy Directive, CDOT adheres to the following objectives, which shall not be interpreted in any way to limit the general policy stated above:

(1) Access for Persons with Disabilities – No qualified disabled person shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination. Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for disabled and non-disabled persons, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting that is reasonably achievable. Even if separate or different aid, benefits, or services are available to handicapped persons, a qualified disabled person shall

not be denied the opportunity to participate in the programs or activities that are not separate or different.

(2) Access for Persons with Limited English Proficiency – Individuals who have a limited ability to read, write, speak, or understand English are considered limited English proficient (“LEP”). Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by CDOT. Ignoring LEP populations may constitute discrimination on the basis of national origin. CDOT shall seek to communicate with LEP populations and provide LEP individuals meaningful access to CDOT programs and activities.

(3) Principles of Environmental Justice – CDOT will meaningfully engage all sectors of the public, including low-income and minority populations, potentially affected by CDOT projects. To help ensure the fair distribution of the benefits and burdens associated with CDOT programs and activities, CDOT will be guided by the following environmental justice principles:

(a) To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority and low-income populations;

(b) To ensure the full and fair participation by all potentially affected communities in CDOT’s decision-making process; and

(c) To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

(4) Fair Competition for Federally-Funded Contracts – A Disadvantaged Business Enterprise (“DBE”) is a business that is owned and controlled by a socially and economically disadvantaged individual or individuals. The objectives of CDOT’s DBE program are to:

(a) To ensure nondiscrimination in the award and administration of federally-assisted contracts in CDOT’s highway, transit, and airport programs;

(b) To create a level playing field on which DBEs can compete fairly for federally-assisted contracts;

(c) To ensure that CDOT’s DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

Subject Policy on Non-Discrimination	Number 604.0
--	------------------------

(e) To help remove barriers to the participation of DBEs in federally-assisted contracts; and

(f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

V. Implementation Plan

1. This Policy Directive shall be effective immediately upon approval by the Transportation Committee.
2. The Civil Rights & Business Resource Center (“CRBRC”) shall implement this Policy Directive and will coordinate education and training to ensure compliance with this Policy Directive. All CDOT employees, its contractors, and anyone who acts on behalf of CDOT, including any department or agency to which CDOT extends federal financial assistance, shall be responsible for assuring that the proscribed discrimination does not occur. Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.
3. Notices informing individuals of their rights under this Policy Directive will be posted on CDOT’s internal and external webpages, and be displayed in public office areas. These notices will also be consistent with CDOT’s policy for communicating with LEP populations.
4. As required by federal law, the CRBRC and regional civil rights staff shall be responsible for acquiring non-discrimination assurances, investigating discrimination complaints, conducting reviews of program areas, and preparing required reports.

VI. Review Date

This Policy Directive shall be reviewed on or before January 2019.

Herman J. Stroking III
Secretary, Transportation Commission

1-22-14
Effective Date

Subject Policy on Non-Discrimination	Number 604.0
--	------------------------

APPENDIX A: Authority for Policy Directive 604.0

Federal Statutes

Title VI of the 1964 Civil Rights Act, 42 U.S.C. § 2000d

Age Discrimination Act of 1975, 42 U.S.C. § 6101

Federal Aid Highway Act of 1970, 49 U.S.C. § 306

Federal Aid Highway Act of 1973, 23 U.S.C. § 324

Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28

Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 – 12213

Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794

Federal Transit Laws, 49 U.S.C. § 5332

Federal Regulations

23 CFR §1.36 – Compliance with Federal laws and regulations

23 CFR pt. 200 – Title VI Program and Related Statutes – Implementation and Review Procedures

23 CFR pt. 771 – Environmental Impact and Related Procedures

28 CFR pt. 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services

28 CFR pt. 36 – Nondiscrimination on the Basis of Disability in Public Accommodations and in Commercial Facilities

28 CFR pt. 42, subpart C – Nondiscrimination in Federally Assisted Programs – Implementation of Title VI of the Civil Rights Act of 1964

49 CFR pt. 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964

49 CFR pt. 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

49 CFR pt. 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance

49 CFR § 37.5 – Nondiscrimination – Transportation Services for Individuals with Disabilities (ADA)

Executive Orders

Exec. Order No. 12898, 59 Fed. Reg. 7629 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Exec. Order No. 13166, 65 Fed. Reg. 50121 – Improving Access to Services for Persons with Limited English Proficiency

EXHIBIT D
Organizational Chart



CRBRC Organization Chart

(As of 8/13/2018 - 12 filled positions, 3 vacancies, approx. 1-2 interns ongoing)

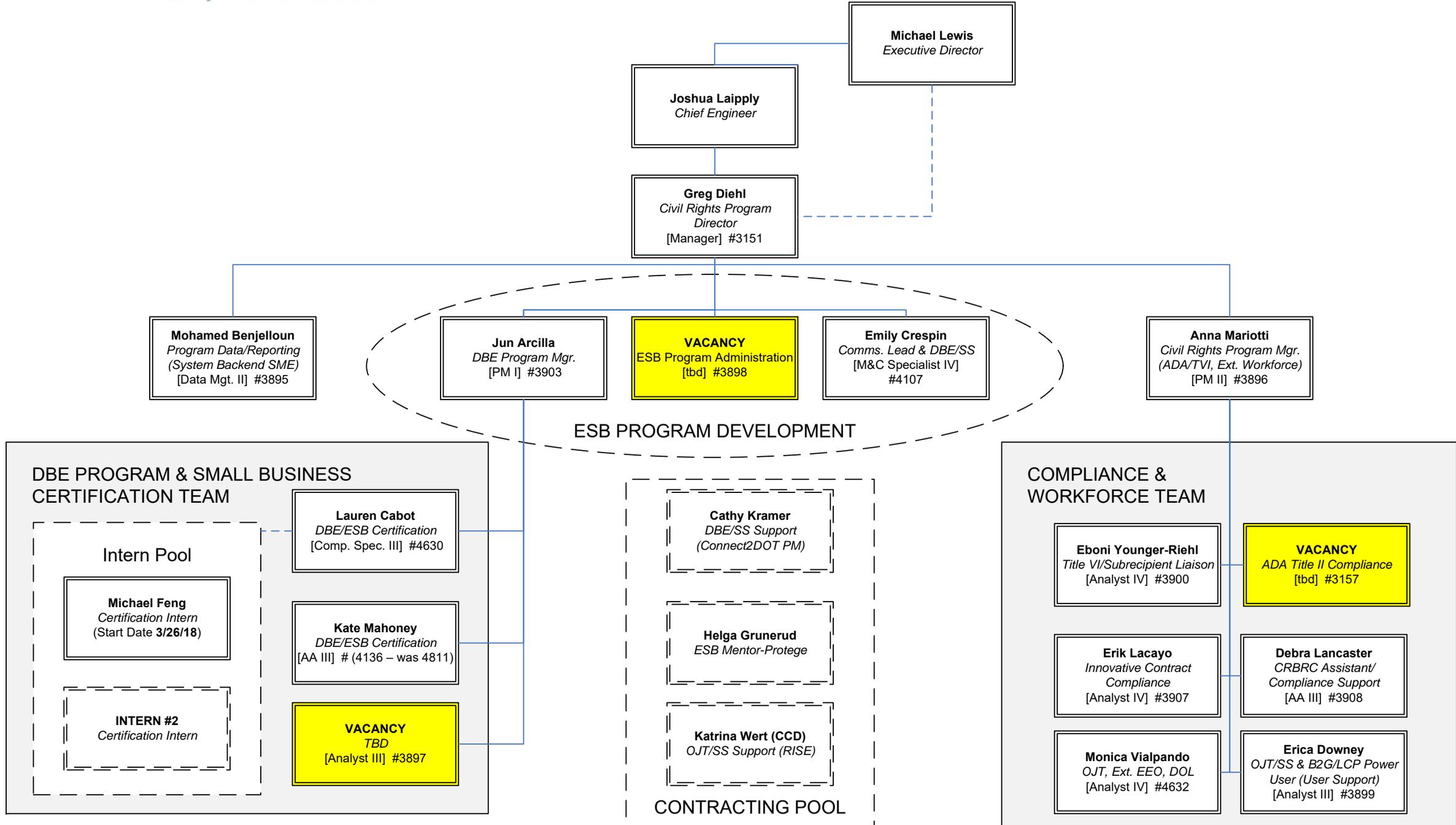


EXHIBIT E

Direct and Independent Access

Assurance of Direct and Independent Access

Provided to CDOT's DBE Liaison Officer, Title VI Coordinator, and ADA Coordinator

SUMMARY: The issues of access, justice, equity, and fairness are interwoven in the fabric of the Colorado Department of Transportation (CDOT). Whether it is the utilization of Disadvantaged Business Enterprise (DBE) firms or the active dissemination of and equal access to information and resources (Title VI/ADA), the effective implementation of these civil rights programs play a critical role in defining CDOT's true success as a federal-funded agency.

Through this notice, CDOT assures its U.S. Department of Transportation (USDOT) partners that CDOT is actively committed to maintaining full compliance with the USDOT requirements for direct access to the head of the organization by CDOT's DBE Liaison Officer, Title VI Coordinator, and ADA Coordinator as further described in Section B below.

DATE: Effective upon signature.

FOR FURTHER INFORMATION CONTACT: Greg Diehl, *CDOT Civil Rights Program Director*, 4201 East Arkansas Ave., Suite 150, Denver, CO 80220, (303) 757-9599, greg.diehl@state.co.us.

Section A. Direct and Independent Access

1. CDOT continues to recognize the importance of streamlined communication in connection with the implementation of its DBE program, Title VI Nondiscrimination program and Americans with Disability Act (ADA) program. Therefore, to ensure an effective and ongoing communication channel for addressing key DBE, Title VI, and ADA program matters, CDOT hereby assures the DBE Liaison Officer, Title VI Coordinator and ADA Program Coordinator have direct and independent communication access to CDOT's Chief Executive Officer.
2. All three of these responsibilities are currently held by CDOT's Civil Rights Program Director. In the event the CDOT Civil Rights Program Director is unavailable, such duty may be delegated to staff in the CDOT Civil Rights and Business Resource Center (CRBRC).

Section B. USDOT Regulation Authorities

- **DBE - 49 C.F.R. §26.25:** What is the requirement for a [DBE] liaison officer? You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

- **Title VI - 23 C.F.R. § 200.9(b)(1):** Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
- **ADA/504 - 28 C.F.R. § 35.107(a):** Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part.
- **49 C.F.R. § 27.13(a):** Designation of responsible employee. Each recipient shall designate at least one person to coordinate its efforts to comply with this part.

Section C. Signatory Authorities

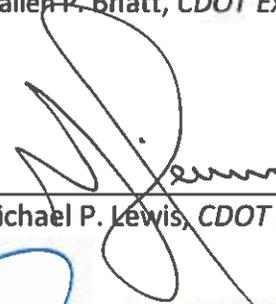
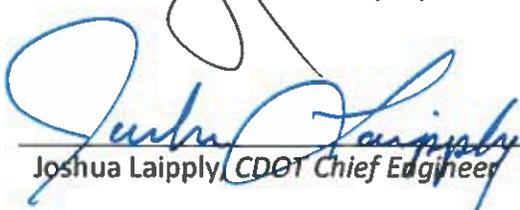
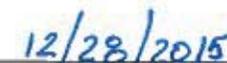
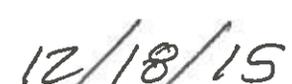
 <hr/>	 <hr/>
<p>Shailen P. Bhatt, <i>CDOT Executive Director</i></p>	<p>Dated</p>
 <hr/>	 <hr/>
<p>Michael P. Lewis, <i>CDOT Deputy Executive Director/COO</i></p>	<p>Dated</p>
 <hr/>	 <hr/>
<p>Joshua Laipply, <i>CDOT Chief Engineer</i></p>	<p>Dated</p>
 <hr/>	 <hr/>
<p>Greg Diehl, <i>CDOT Civil Rights Program Director</i></p>	<p>Dated</p>

EXHIBIT F

Professional Services DBE/ESB Requirements

DISADVANTAGED BUSINESS ENTERPRISE (DBE) & EMERGING SMALL BUSINESS (ESB) REQUIREMENTS

I. Definitions

Commercially Useful Function. Responsibility for the execution of work by actually performing, managing, and supervising the work, as described in 49 CFR 26. 55(c).

Commitment. A portion of the contract, identified by dollar amount and work area, designated by the Consultant for participation by a particular DBE or ESB firm in order for participation to count toward a contract goal or Small Business Target.

Contract Goal. The percentage of the contract established by CDOT for participation by DBEs. The contract goal is stated in the Invitation for Consultant 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.

Emerging Small Business (ESB). A CDOT-certified Emerging Small Business firm listed on the ESB Directory at www.coloradoesb.org.

Good Faith Efforts. All necessary and reasonable steps to achieve a contract goal or Small Business Target which by their scope, intensity, and appropriateness to the objective could reasonably be expected to obtain sufficient participation. Guidance on good faith efforts is provided in 49 CFR Part 26, Appendix A.

Reduction. Reduction occurs when the consultant reduces a commitment to a DBE or ESB. A reduction is a partial termination.

Small Business Targets. Promises to utilize DBEs or ESBs for which the Consultant received incentive points during the selection process.

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 vendors.

Substitution. Substitution occurs when a consultant seeks to find another certified firm to perform work on the contract as a result of a reduction or termination.

Termination. Termination occurs when a Consultant no longer intends to use a DBE and/or ESB 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 and/or ESB subconsultant with its own forces or those of an affiliate, a non-DBE and/or ESB firm, or with another DBE and/or ESB firm.

Work Code. A code to identify the work that a DBE is certified to perform. A work code includes a six digit North American Industry Classifications System code plus a descriptor. Work codes are listed on a firm's profile on the UCP DBE Directory. The consultant may contact CRBRC to receive guidance on whether a work code covers the work to be performed.

II. NON-DISCRIMINATION AND SUBCONTRACTING REQUIREMENTS

The following requirements apply to all contracts and subcontracts.

- a. *Consultant Assurance.* By submitting a proposal for this contract, the Consultant agrees to the following assurance: The consultant, sub recipient, or subcontractor 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 or such other remedy as CDOT deems appropriate, which may include, but is not limited to: withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the consultant from future bidding as non-responsible.
- b. *Prompt Payment.* Payments to all Subconsultants shall be made within seven (7) days of receipt of payment from CDOT or no later than ninety (90) 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 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 to CDOT or to deposit payments made. The Consultant shall electronically submit prompt payment reports to CDOT by the 15th of each month through the B2G software each month. If no payment has been made, the Consultant shall document this in the prompt payment audit report.
- c. *Subcontract Terms.* The assurance provided in subsection (b) and the prompt payment terms outlined in subsection (c) of this section shall be included in all subcontracts or other agreements for the performance of work on the project.

III. Good Faith Effort Requirement

In accordance with 49 CFR 26.53, CDOT may not award a contract until it has determined that the Consultant has demonstrated good faith efforts to meet the contract goal. In negotiated procurements, such as professional services contracts, the Consultant must make a contractually binding commitment to meet the goal at the time of the submission of the proposal and more detailed commitments must be submitted prior to final award.

- a. The Affidavit of Small Business Participation is the Consultant’s contractually binding commitment and must be submitted with the Consultant’s statement of interest. Failure to submit the Affidavit of Small Business Participation will result in the Consultant being deemed non-responsive and ineligible for award. In section [] of the Affidavit of Small Business Participation, the Consultant shall outline its approach to meeting the contract goal and affirm, under oath, that the Consultant will make Good Faith Efforts to meet the contract goal. For as needed contracts, the Consultant is affirming it will make Good Faith Efforts on the overall contract and on each task order.
- b. For fund encumbered contracts, commitments are due prior to contract award. For as needed contracts, commitments are due with each task order proposal.

IV. Small Business Targets and Scoring

The Affidavit of Small Business Participation also provides space for the Consultant to identify the Small Business Targets for which it is seeking points.

- a. Small Business Targets are binding obligations of the Contract subject to enforcement actions, including withholding of payments and /or future task order approvals, if not fulfilled. Failure by the Consultant to meet the Small Business Targets will results in sanctions unless CDOT determines that the Consultant demonstrated good faith efforts to fulfill the targets.
- b. Small Business Target points will be awarded as follows:

ESB Prime:	10 points
DBE Prime:	6 points

ESB Participation: 0.5 points for each percentage of ESB participation committed
New Relationship: 1 point for a new relationship with an ESB or DBE Subconsultant.
Level 1: 1 point for the use of a certified Level 1 ESB Subconsultant.

Non-DBE/ESB Consultants can only receive a maximum of 7 points. A new relationship occurs when the Consultant is not teamed with the ESB/DBE Subconsultant on a CDOT contract in the past 3 years. Teaming relationships will be tracked starting on August 1, 2016, thus, all relationships can be considered a new relationship starting on this date. By making the commitment to a New Relationship or Level 1 firm, the Consultant is committing to use this Subconsultant for at least \$50,000 or 2% of the work, whichever is less. The ESB Participation, New Relationship and Level 1 points may all be combined.

V. Submission of Utilization Plan in B2G Now

Prior to contract award, the selected Consultant must submit a utilization plan using B2G Now Software. CDOT will initiate the utilization plan and the Consultant will have five days to return it to CDOT.

- a. If the contract is fund-encumbered, the Consultant must document all team members the Consultant expect to utilize on the contract. Additionally, the Consultant must submit commitments to meet the contract goal and/or Small Business Targets. The commitments must include the Subconsultant(s) the Consultant will use, the work area(s) the Subconsultant(s) will be performing, and the value of the work that the Subconsultant(s) will perform. The Consultant must attach the project cost worksheet for each commitment. If a project cost worksheet is not available, the Consultant must attach a letter of intent confirming the firm's participation on the contract. If the Consultant is a certified firm, it shall include itself in the utilization plan for DBE credit. If the Consultant does not obtain sufficient participation to meet the DBE Contract Goal, the Consultant shall provide an explanation of its Good Faith Efforts to obtain participation by submitting a Good Faith Efforts Report and supporting documentation in the utilization plan.
- b. If the contract is an as-needed, task order-based contract, the Consultant must only document all team members the Consultant expect to utilize on the contract. However, the team members must be consistent with the participation promised in the Affidavit of Small Business Participation. The Consultant may document 0% participation for each team member in the utilization plan, with the exception of New Relationships and Level 1 ESBs, which must have a commitment of at least 2%.

VI. Task Order Process for As Needed Contracts

CDOT will not award a task order unless the Consultant provides commitments sufficient to meet the contract goal and ESB participation Small Business Target on the task order and the overall contract or otherwise demonstrates good faith efforts. The applicable regional civil rights office may also withhold approval and/or request additional information if the Consultant is not on track to meet its other Small Business Targets.

- a. With each task order proposal, the Consultant shall submit an Anticipated Participation Plan for Task Orders that documents all DBE and/or ESB Subconsultants that will be used to complete the work of the Task Order. If the Consultant has not obtained any Commitments, the Consultant shall state so. If the Consultant is a certified firm, it shall include itself on the Anticipated Participation Plan for Task Orders.
- b. The Project Cost Worksheet shall constitute confirmation of the commitment by the DBE or ESB Subconsultant. The Consultant must submit a Letter of Intent confirming the commitment for any vendor Subconsultant for which a Project Cost Worksheet is not provided.

- c. If, on a task order the Consultant does not obtain sufficient participation to meet the DBE contract goal or an ESB participation Small Business Target, the consultant shall provide an explanation of its Good Faith Efforts to obtain participation by submitting a Good Faith Efforts Report and supporting documentation. The Consultant may include an explanation of proposed participation on future task orders.
- d. If the applicable civil rights office determines the consultant has not made Good Faith Efforts, the contract and/or task order proposal will not be approved. The determination of the regional civil rights office may be appealed to the Regional Transportation Director. The determination of the Civil Rights and Business Resource Center shall be appealable to the Chief Engineer.

VII. Eligible DBE and ESB Participation

The following rules will be used to determine whether work performed by a Subconsultant qualifies as eligible participation to count toward the Contract Goal or Small Business Target:

- a. The work performed by the DBE and/or ESB Subconsultant must be identified in an approved Commitment.
- b. The Subconsultant must be certified upon submission of the Commitment and prior to starting work. For DBE firms this includes being certified in the work to be performed. CDOT will evaluate whether the work to be performed can reasonably be construed to fall under the Work Codes in which the DBE is certified. If a Subconsultant is decertified after the issuance of a contract and/or task order, the participation on such contract and/or task order by that DBE or ESB will continue to count.
- c. Only work performed by a DBE and/or ESB that performs a Commercially Useful Function in the work of the Contract will count.
- d. When a DBE and/or ESB subcontracts part of the work of its contract to another firm, the value of the subcontracted work may only be counted if the subcontractor is also a certified firm. Work that a DBE and/or ESB subcontracts to a non-certified firm does not count. DBE and ESB firms may use an employee leasing company. Such participation will count if the certified firm maintains an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.
- d. The Consultant may count fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, 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.
- e. 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.
- f. When a DBE and/or ESB performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE and/or ESB performs with its own forces may count toward the contract goal. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2G software and be reviewed by CDOT.

- g. For purposes of determining whether the Consultant has met the contract goal and/or Small Business Targets at the end of the Contract, eligible participation shall be calculated based upon the total amount paid to DBEs and/or ESBs under the Contract.

VIII. PLAN MODIFICATIONS

Termination or Reduction of Commitments shall only be permitted at the discretion of CDOT based upon a demonstration of good cause by the Consultant. Consultants may request modification approval by submitting revised Small Business Participation Plan to CDOT. The Consultant may not Terminate or Reduce a Commitment without CDOT approval.

- a. Before requesting CDOT approval, the Consultant must give notice in writing to a DBE and/or ESB Subconsultant of the Consultant's intent to Terminate or Reduce the Subconsultant's work, with a copy to CDOT. Unless otherwise waived in writing by the DBE or ESB, the Consultant must give the DBE/ESB five (5) days to respond to the Consultant's notice and advise CDOT of the reasons, if any, that it objects to the proposed Termination or Reduction and why the Consultant's 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/ESB firm may also voluntarily waive the response period.
- b. A Consultant must have good cause to terminate or reduce the work. Examples of good cause justifications can be found in 49 CFR Part 26.53(f)(3).
- c. When a Commitment is Terminated or reduced or a small business fails to complete its work on the Contract for any reason, the Consultant shall make Good Faith Efforts to find another firm to perform at least the same amount of work under the Contract. For as needed contracts, the Consultant may make the work up on the applicable task order or on another task order under the contract.
- d. Following the five (5) day response period for termination or reductions, the Consultant shall request the termination or reduction from CDOT by submitting a revised Small Business Participation Plan for approval. If the Consultant is unable to find commensurate substitution, the Consultant shall provide documentation of the Consultant's Good Faith Efforts to CDOT within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the Consultant. CDOT shall provide a written determination to the Consultant stating whether or not Good Faith Efforts have been demonstrated.
- e. A Consultant shall not be entitled to payment for any work or material performed by an unapproved DBE or ESB Subconsultant as a result of an unapproved Termination or Reduction of a certified Subconsultant. Additionally, the Consultant shall not receive payment for any portion of the Contract in which the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal or Small Business Targets. The Consultant will not be subject to duplicate reduction for the same offense. CDOT may adjust the payment reduction wherein the Consultant demonstrates Good Faith Efforts.

IX. ENFORCEMENT

- a. CDOT may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBE Subconsultants and applicants for DBE certification, ESB Subconsultants and applicants for ESB certification, complainants, and Consultants using Subconsultants to meet the contract goal are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.
- b. If CDOT determines that a Consultant or Subconsultant was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE and/or ESB

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:

- i. Refuse to count any fraudulent or misrepresented DBE/ESB participation;
 - ii. Withhold progress payments to the Consultant commensurate with the violation;
 - iii. Reduce the Consultant's prequalification status;
 - iv. Refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; and/or
 - v. Seek any other available contractual remedy.
- c. CDOT may withhold approval of task orders and/or payment to the Consultant for failure to comply with these requirements.

**COLORADO DEPARTMENT OF TRANSPORTATION
GOOD FAITH EFFORTS REPORT**

Project Name:

Instructions: Complete this form only if the DBE goal or ESB goal has not been met.

Section 1. Consultant Information.

Consultant:	Contact Name:	Consultant is an ESB: <input type="checkbox"/>
		Consultant is a DBE: <input type="checkbox"/>
Contact E-Mail:	Contact Phone #:	

Section 2. Efforts to Achieve DBE/ESB Participation.

- a. Describe your good faith efforts to meet the contract goal and describe why the goal could not be reached.
- b. If you are making a Good Faith Efforts Report for a task order, please include participation achieved on the overall contract and any planned participation for future task orders to meet the contract goal.

Section 3. Affidavit of Good Faith Efforts.

By signing below, the consultant hereby affirms that it has made good faith efforts and has documented all such efforts in this form and the attached supporting documentation.

I, _____, am the _____ of _____.
(Representative Name) *(Title)* *(Company)*

(Signature)

(Date)

EXHIBIT G

Reporting and FAQs for Grant Partners



DBE FAQs for Grant Partners

1. What is a DBE?

Disadvantaged business enterprise or DBE means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A DBE must be certified by the Colorado UCP.

2. What is the purpose of the DBE Program?

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

3. As a sub-recipient do I have requirements to include any DBE provisions in my contracts?

Each federal aid contract signed by your agency with a contractor, and each subcontract the prime contractor signs with a subcontractor must include the following assurance exactly as it is stated:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.”

4. Are there any specific provisions that I, as a sub recipient, must adhere to regarding the payment of DBEs?

The DBE regulation requires that all subcontractors be paid within thirty (30) days of payment to the prime for work completed by the subcontractor. Colorado law requires payment within seven days on all construction contracts. Additionally, prime contractors must pay subcontractors all retainage within 30 days after the subcontractor's work is satisfactorily completed. This must be accomplished by one of the following methods:

- (1) decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors;
- (2) decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed; or
- (3) withhold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

You must have methods to enforce the requirements of this section.

5. What are the DBE reporting requirements for subrecipients?

All sub recipients are responsible for reporting DBE participation. Direct recipients need to submit a copy of their FTA submitted semi-annual report. If you are not a direct recipient please complete all portions of the survey.

The Semi-Annual Survey was created by CDOT to collect information from grant partners regarding contracting opportunities and DBE participation. A contracting opportunity refers to the procurement of any goods or services for which federal funds are used, not including salaries, benefits, utilities, or agreements with/payments to other public agencies. You will need to report the following information on the Semi-Annual Survey:

- In the Awarded/Committed section, you must report all contracts and subcontracts awarded during the reporting period. “Awarded” can include contracts awarded via a letting process or the procurement of goods and services in any other manner (i.e. purchasing supplies at a store).
- In the Actual Payment section, you must report payments on all completed contracts and subcontracts. “Completed” can include final payment (from you to the prime) on a large contract or more informal procurements that are awarded and completed in the same instant (i.e. purchasing supplies at a store). Therefore, informal purchases should be reported on both forms in the same period.
- In the “In progress” section, you must report payments on all contracts and subcontracts that have not yet been completed.

6. How often do I have to report?

The first reporting period is from October 1 to March 31st and the semi-annual Survey will be due no later than May 15th. The second reporting period is April 1st to September 30th and the semi-annual survey will be due no later than November 15th. At the end of each semi-annual reporting period, an e-mail will be sent to all grant partners containing the link to the survey. Each grant partner will have 2-3 weeks to complete the survey.

7. Where can I go to learn more about CDOTs DBE program?

CDOT’s DBE webpage can be accessed at

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

CDOT’s DTR grant partner webpage can be accessed at

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

8. Where can I go to find DBE certified firms?

CDOT ‘s DBE directory can be found at www.coloradodbe.org.



DBE Flowchart

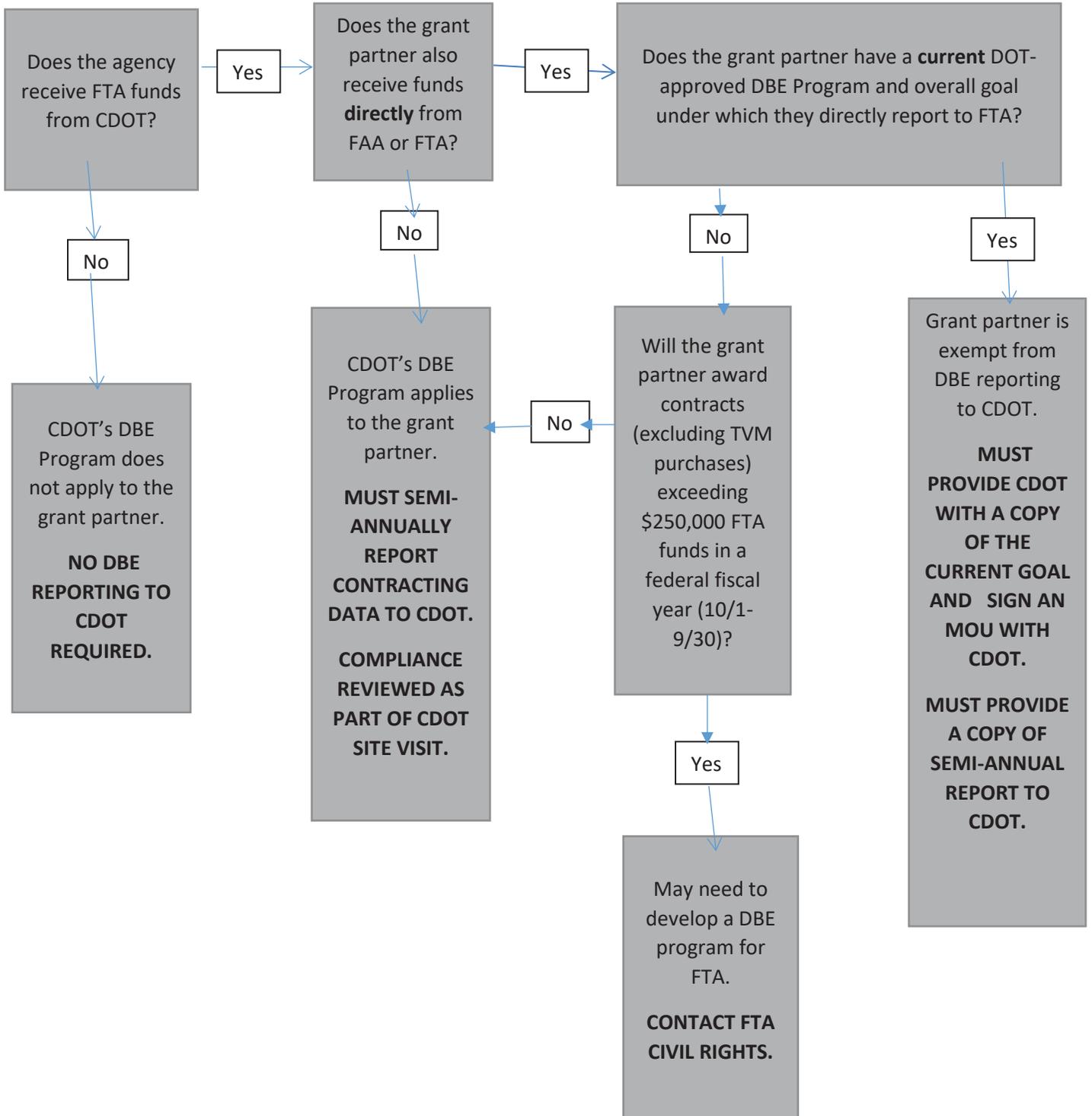


EXHIBIT H
FHWA ESB Approval



U.S. Department
of Transportation

Headquarters

1200 New Jersey Avenue, SE
Washington, DC 20590

March 30, 2012

Mr. John Cater
Division Administrator
Federal Highway Administration
Colorado Division Office
12300 W. Dakota Avenue, Suite 180
Lakewood, CO 80228

Small Business Element – Approval

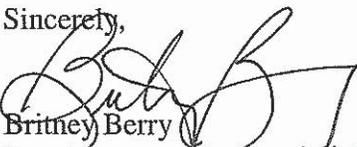
Dear Mr. Cater:

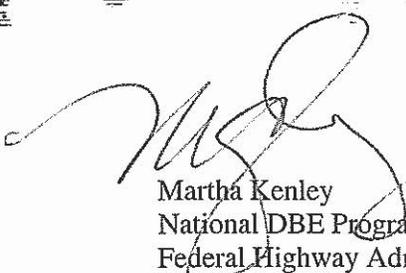
This letter is to confirm that the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) have received the Colorado Department of Transportation's Disadvantaged Business Enterprise (DBE) Program Submission containing the new *Fostering Small Business Participation Element*. This submission is required pursuant to Section 1101 (b) of Transportation Equity Act for the 21st Century and 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs," particularly the Final Rule set forth in the Federal Register [76 FR 5083 – Disadvantaged Business Enterprise: Program Improvements] published January 28, 2011.

In reviewing your small business element, both operating administrations have determined that you have sufficiently established a provision that fulfills the intent of this part. This letter serves as an acknowledgment of both FTA and FHWA's approval of your Small Business Element.

If you need further assistance please feel free to contact Britney Berry of FTA at britney.berry@dot.gov, Martha Kenley of FHWA at martha.kenley@dot.gov.

Sincerely,


Britney Berry
Equal Opportunity Specialist
Federal Transit Administration


Martha Kenley
National DBE Program Manager
Federal Highway Administration

Cc: Linda Ford, Acting Director, Office of Civil Rights, FTA
Warren Whitlock, Associate Administrator, Office of Civil Rights, FHWA
Terry Rosapep, Region VIII Administrator, FTA
Rebecca Tanrath, Region VIII Civil Rights Officer, FTA

EXHIBIT I
FTA ESB Approval



U.S. Department
of Transportation

1200 New Jersey Avenue, SE.
Washington, D.C. 20590

**Federal Railroad
Administration**

February 29, 2012

Katherine M. Williams
Small Business/Civil Rights Specialist
Center for Equal Opportunity
Colorado Department of Transportation
4201 East Arkansas Ave., Room 200
Denver, CO 80222

Dear Ms. Williams:

The Office of Civil Rights at the Federal Railroad Administration has reviewed your Small Business Integration Plan Program document outlining your compliance to the small business provisions of Colorado's Cooperative Agreement – FR-IPR-0064-11-01-00. No deficiencies were found. We noted the question asked and are in the process of revising our guidance to include information on the issue you raised. Once completed, you will receive a new copy of our guidance.

If you have any questions about this matter, please contact me at 202-493-6012 or via electronic mail at rosanne.goodwill@dot.gov.

Sincerely,

A handwritten signature in cursive script that reads "Rosanne Goodwill".

Rosanne Goodwill
Acting Director
Office of Civil Rights

EXHIBIT J

Good Faith Effort Administrative Reconsideration Process

CDOT Good Faith Effort Administrative Reconsideration Process

1. If the CDOT Disadvantaged Business Enterprise Liaison Officer (DBELO) determines that the Bidder did not demonstrate good faith efforts to meet the contract goal, the DBELO shall notify the Bidder in writing, via the email address provided on the Form 1416.
2. The notice shall state that the Bidder is entitled to administrative reconsideration. CDOT's independent administrative reconsideration official is the Chief Engineer or his or her designee, provided that such designee did not participate in the original determination. The DBELO shall provide the administrative reconsideration official with a copy of the notice to the Bidder.
3. The Bidder has five business days from the date of the notice from the DBELO to submit a request for administrative reconsideration to the email addresses and/or fax numbers provided in the notice.
 - a. The request shall include the Bidder's basis for the appeal and any supporting documentation that the Bidder would like considered as part of the reconsideration.
 - b. The request shall also include a statement as to whether the Bidder would like a hearing and specify whether the Bidder would like an in-person or a telephone hearing. If the Bidder does not include a request for a hearing, the right to a hearing is waived.
4. If the Bidder has requested a hearing, the administrative reconsideration official will establish a date and time for the hearing and send written notice via email to the DBELO and Bidder at least two business days in advance of the hearing. If schedules permit, the parties may waive the two day requirement.
5. The administrative reconsideration official may request additional documentation from the Bidder and/or the DBELO. A copy of all requests and responses shall be provided to the other party and the other party shall be given an opportunity to respond.
6. The administrative reconsideration official shall issue the final determination as to whether the Bidder made good faith efforts to meet the contract goal. The determination of the administrative reconsideration official is not appealable.

EXHIBIT K
UCP Program Plan

UNIFIED CERTIFICATION PROGRAM PLAN



STATE OF COLORADO

Revised April 2017

Purpose of the UCP

Federal regulations require all United States Department of Transportation recipients within the State of Colorado to participate in the Colorado Unified Certification Program (UCP). The purpose of the UCP is to provide “one-stop shopping” to applicants for Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state. The UCP certifying agencies make certification decisions on behalf of all USDOT recipients in the state with respect to participation in the USDOT DBE and ACDBE Programs. Certification decisions made by the UCP are binding on all DOT recipients within the state. All participants in the UCP must cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations.

UCP Directory

The directory of all Colorado UCP certified firms is available at www.coloradodbe.org. It is updated as certification decisions are made. The Colorado UCP does not have any reciprocity agreements with other states or entities. Only those firms certified by a UCP certifying agency and listed on the UCP DBE Directory may count as a DBE or ACDBE in Colorado.

Executive Committee

The UCP Executive Committee (EC) is responsible for ensuring the UCP is in compliance with federal regulations. The EC includes representatives from the following agencies: Colorado Department of Transportation, Regional Transportation District, City and County of Denver, Colorado Springs Airport or designated City of Colorado Springs representative, and a fifth member, representing the smaller, rural members.

For purposes of determining a quorum and voting, each EC agency is entitled to one vote. A quorum is defined as the presence of a majority of the EC members named at the time of the meeting. A vote of the majority of EC members in attendance at a meeting at which a quorum is established shall be the act of the EC on all normal matters.

The following rules will be in effect for matters described as extra-normal. A quorum is defined as the presence of a majority of the EC members named at the time of the meeting. A unanimous vote of all EC members at which a quorum is present is required to act on all such matters. Extra-normal matters may include alteration of this UCP Plan in any fundamental manner, admittance of new EC members, recognition of new Certifying Members.

EC meetings shall take place quarterly. Minutes are taken by the host agency and approved at the next meeting. Upon approval, meeting minutes are retained by CDOT’s Civil Rights & Business Resource Center. The certifying agencies shall provide a report of all certifications, denials, revocations and suspensions at each meeting or via electronic format in advance of each meeting.

Certifying Agencies

The Colorado UCP certifying agencies operate independently but are bound together by this UCP Agreement. The CDOT Civil Rights & Business Resource Center (CRBRC) and the City and County of Denver Division of Small Business Opportunity (DSBO) are the current Colorado UCP certifying agencies. The certifying agencies provide DBE and ACDBE certification services on behalf of all Colorado UCP members.

The certifying agency is responsible for making any changes to an existing certification. Those changes include address, phone number, contact person, email, and work codes. If another member receives a request to make changes, the request must be forwarded to the certifying agency administering the firm's DBE certification.

Any UCP member may apply to be a certifying agency by submitting a written request to the EC. The request must clearly demonstrate that the requesting agency possesses the necessary staff to process certification applications and the financial resources to adopt and maintain the software system employed to produce the UCP DBE Directory. It is highly recommended that staff possess expertise in the certification process and eligibility standards.

If any agency or individual feels that a particular certifying agency is not complying with the requirements of 49 CFR Parts 23 and 26, they may make a written complaint to the EC through CDOT's CRBRC. The EC will review the complaint and circumstances fully. If the EC, not including the complaining member or the agency in question, reaches a consensus that the certifying agency is not complying with the requirements, remedial action will be taken.

Remedial action may take the form of a formal written determination of the issues regarding that agency's certification procedures or practices. This determination will be sent to the senior management official or chief operating officer of the agency in question, the program administrator, and USDOT. The certifying agency shall review the procedures at issue and make improvements to the process in order to meet 49 CFR Parts 23 and 26.

The EC may also require a procedural review and concurrence process. The member in question will be required to obtain EC concurrence in certification determinations for a specific period of time. Depending upon the situation, the EC may "pair" the member with another certifying member or it may require concurrence on certification decisions by a majority of the EC. If the paired members' dispute the determination, the EC will make the final determination.

Should the EC make every effort to correct the deficiencies in an agency's certification process but is unsuccessful, the EC may submit its findings to USDOT and the relevant operating administration along with a formal request for assistance in resolving the issue.

Certification Standards and Process

The UCP certifying agencies must follow all certification procedures and standards of 49 CFR Part 26 and Part 23, as applicable, and as set forth in each certifying agency's respective DBE program manuals. The UCP certifying agencies must implement USDOT directives and guidance concerning certification matters. Firms seeking certification must provide a service that can be reasonably viewed as being able to count toward the DBE goals of at least one USDOT recipient.

Home State Certification Procedures

Certifying agencies may not process applications from firms that have been denied certification, or whose certification has been revoked, until one year has passed from the date of the denial or revocation.

Certified firms that withdraw from the DBE program by voluntarily relinquishing their certification will be considered revoked and may not reapply for certification until one year has passed from the date of the voluntary withdrawal.

Firms that are denied certification, withdraw their application, or have their certification revoked must reapply with the same certifying agency in the three years immediately following the date of denial,

withdrawal, or revocation. Applications that are closed by the certifying agency due to non-responsiveness by the applicant will be treated as an application withdrawal.

When a certifying agency revokes a firm's DBE certification, denies its DBE application, or permits the withdrawal of its DBE application, the firm may only reapply to that same certifying agency within three years from the date of the revocation, denial, or withdrawal even if the firm is subsequently certified by another recipient for one of its local programs. Exceptions can be made for good cause.

Applications must be processed by the certifying agency to which an application is first submitted. Applications will not be transferred between certifying agencies except for good cause. Once a firm has been certified, administration of that firm's certification record will remain with the certifying agency who conducted the review and granted certification. Certification records will not be transferred from one certifying agency to another except for good cause.

All firms seeking ACDBE certification must apply through the DSBO. The certifying agency that certified a firm as a DBE will continue to administer that firm's certification record, regardless of any subsequent ACDBE applications and/or certifications with the DSBO. Exceptions can be made for good cause.

The certifying agency that certified a firm as a DBE is responsible for updating that firm's existing certification record, including the processing of any work code change requests. If another certifying agency receives a work code change request, the request must be forwarded to the certifying agency responsible for administering that firm's DBE certification record.

Interstate Certification Procedures

The Colorado UCP has elected to process interstate applications pursuant to 49 CFR § 26.85(c).

NAICS

The work performed by a firm that is eligible to be counted for DBE participation will be identified by using the NAICS system's six-digit base number system plus the applicable "Corresponding Index Entry." The following is an example of a complete work code: 541330 Electrical engineering services.

Ratification

All USDOT recipients located in Colorado must ratify this UCP Agreement. In order to ratify the Agreement, the recipient must submit a signed copy of the Ratification Letter (see attachment 1) to the Colorado Department of Transportation Civil Rights and Business Resource Center at 4201 East Arkansas Avenue, Room 150, Denver, CO 80222 or dot_civilrights@state.co.us. Failure to ratify the Agreement may be grounds for USDOT, or one of its operating administrations, finding the recipient in noncompliance with 49 CFR Part 26. A finding of noncompliance may put the recipient's federal funds in jeopardy.

By ratifying the Agreement, an agency agrees that it will recognize as a certified DBE or ACDBE, any business that has obtained a valid certification from any certifying agency. If a UCP member is in receipt of information that is necessary or critical to making a determination of DBE or ACDBE eligibility, the agency shall notify and submit the information to the appropriate certifying member.

UCP members shall not independently execute any DBE or ACDBE certification reciprocity agreements with any other agency or entity, including city, county, state or federal agencies, binding that member, and subsequently the UCP, to a reciprocity agreement.

Attachments

1. Ratification Letter Template

<<Date>>

Colorado Department of Transportation
Civil Rights and Business Resource Center
Jun Arcilla, DBE Program Manager
2829 W. Howard Place, 1st Floor
Denver, CO 80204

Subject: Letter of Receipt and Ratification
State of Colorado Unified DBE Certification Program

This letter certifies that <<Agency name>> has received and reviewed a copy of the Colorado Unified DBE Certification Program Plan (UCP). We understand that as a recipient of US DOT funding we are required to participate in the UCP as outlined in 49 CFR Part 26.81.

This letter further certifies that <<Agency name>> ratifies the UCP and is in agreement with and will abide by its provisions.

<<Agency name>>

By _____
<<Name>>, <<Title>>