

COLORADO DEPARTMENT OF TRANSPORTATION

ESB Program Guidelines

Revised February 2013

COLORADO DEPARTMENT OF TRANSPORTATION
EMERGING SMALL BUSINESS PROGRAM GUIDELINES

A. Definitions

- 1) **Applicability of ESB Program Rule Definitions:** Capitalized terms not defined herein shall have the meaning provided in the ESB Program Rules.
- 2) **Additional Definitions.** The following definitions shall apply to the capitalized terms used herein:
 - a. **Application:** Any application documents and supplemental materials necessary for CDOT to determine whether an applicant qualifies for ESB certification.
 - b. **Certification Year:** The annual period for which an applicant's certification is valid.
 - c. **CRBRC:** Colorado Department of Transportation Civil Rights and Business Resource Center (formally the Center for Equal Opportunity).
 - d. **Letter of Certification:** Written notification from CDOT to the applicant stating that the business has been certified as an ESB for the current annual period.
 - e. **Level.** The size category to which an ESB has been assigned within the ESB Program.
 - f. **Notice of Denial:** Written notification provided by CDOT to the applicant stating that CDOT has determined that the applicant has failed to meet the criteria for certification.
 - g. **Notice of Incomplete Application:** Written notification provided by CDOT to the applicant stating that more information is necessary to process the application, the applicant has failed to complete the required Small Business Orientation, and/or any other reason for which CDOT cannot make a determination regarding Certification.
 - h. **Notice of Pending Revocation:** Written notification provided by CDOT to an ESB stating that the ESB's Certification is in pending revocation due to the conduct or status of the ESB.
 - i. **Primary Industry Classification:** The North American Industry Classification System designation which best describes the primary business of the firm as determined by CDOT based upon the firm's revenue, equipment, expertise and percentage of time and work force dedicated to such business. One-half of the size standard established by the SBA for the Primary Industry Classification, but no more than one half of the DBE Program size standard, shall serve as the size standard for determining the firm's eligibility for ESB Certification.

B. Certification

- 1) **Application Materials:** Every Business seeking Certification must submit a completed, signed original application, with all supporting materials (originals not required), to the CRBRC. These forms shall be available online and in hard copy at the CRBRC.

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- 2) **Review of the Application:** Upon review of the Application, CDOT will notify the applicant whether the Application is ready for evaluation and, if not, what additional action or information is required. Applications that are incomplete or include little or no supporting documentation may be rejected by CDOT and returned to the applicant.
- 3) **Requests for Information.** The applicant shall respond to all requests for information within fifteen (15) days of such request being made by CDOT. If the applicant does not respond to CDOT within fifteen (15) days, CDOT may, at its discretion, either:
 - a. Make a determination based upon the information provided; or
 - b. Close the application until additional information is provided by the applicant.

When an applicant provides the information after the fifteen (15) days have passed but prior to CDOT making a Determination of Certification, the application will be placed last in the queue for review.

- 4) **Eligibility Determination.** Within ninety (90) days of receipt of a complete application, CDOT shall issue a Notice of Denial or Letter of Certification.
- 5) **Primary Industry Classification Determination.** The Primary Industry Classification which CDOT has assigned to the firm shall be included in the Letter of Certification. The Primary Industry Classification shall also be identified in the Notice of Denial if the denial is based upon exceeding the size standard for participation. The applicant may appeal CDOT's determination of the Primary Industry in accordance with CRS §§ 24-4-104 and 105.
- 6) **Level.** Certified ESBs shall be divided into two categories: Level 1 and Level 2 ESBs.
 - a. For ESBs that are deemed to be primarily engaged in engineering and consulting services, such ESBs shall be certified as Level 1 if it is determined that their size, in accordance with the calculations outlined in the ESB Rules, does not exceed one million dollars average annual gross receipts. For ESBs that are deemed to be primarily engaged in construction work or related dealings, such ESBs shall be certified as Level 1 if it is determined that their size, in accordance with the calculations outlined in the ESB Rules, does not exceed three million dollars average annual gross receipts. All other ESBs shall be considered Level 2 ESBs.
 - b. The Letter of Certification shall state the Level to be assigned to the Business. The applicant may appeal CDOT's determination of the Level in accordance with CRS §§ 24-4-104 and 105.
 - c. The level of the ESB will be listed on the ESB Directory.
- 7) **Small Business Orientation.** Each applicant must complete a Small Business Orientation in order to become certified. The Small Business Orientation must be completed before submitting an application for Certification, but no more than six months prior to applying for Certification.

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- 8) **DBE Certification Synchronization.** CDOT will synchronize the DBE and ESB certification month for any firm currently certified as a DBE at the time of ESB Certification. The initial Certification period may be less than a complete year, as the firm will be required to submit the Renewal of Certification documents at the time of the next DBE renewal date.
- 9) **Burden of Proof.** The applicant bears the burden of proving by a preponderance of the evidence to CDOT that it meets the criteria for Certification.
- 10) **Appeals.** Any full or partial denial for Certification shall be appealable in accordance with CRS §§ 24-4-104 and 105.

C. Modification of Primary Industry Classification

- 1) **Written Request for Modification.** An ESB that seeks a reconsideration of its Primary Industry Classification must submit a written request to CDOT Center for Equal Opportunity outlining the reasons for such request and any other supplemental information that will assist CDOT in making a determination. An ESB may only make one change request within a Certification Year.
- 2) **Appeals.** Denial of a Primary Industry Classification change request shall be appealable in accordance with CRS §§ 24-4-104 and 105.

D. Renewal of Certification

- 1) **Renewal Schedule.** Renewal of Certification shall occur on an annual basis at the end of the Certification Year. Unless otherwise stated, this period begins with the day in which CDOT issues the Notice of Certification and ends with the last day in the same month in the following year.
- 2) **Request to Change.** An ESB may request that CDOT change the Renewal of Certification month. To be considered, such request must be based upon a significant business reason for changing the Renewal of Certification month. If Renewal of Certification and an ESB's tax return preparation are incompatible, then such ESB must request a change in the Renewal of Certification month. CDOT retains the right to accept or deny requests to change the Renewal of Certification dates.
- 3) **Responsibility of Applicant.** The ESB is responsible for submitting Renewal of Certification information to CDOT before the end of its annual period. CDOT will send a courtesy notice regarding renewal approximately 45 days in advance, but the ESB is ultimately the responsibility of the ESB to ensure that all materials are received before the end of the Certification Year. If CDOT does not receive the Renewal of Certification information, it shall provide notice to the ESB that it intends to revoke the firm's Certification.
- 4) **Required Documentation.** In order to be considered for renewal, the ESB must submit the ESB Certification Renewal Application and all supporting documentation.

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- 5) **Additional Investigation.** If CDOT has reason to believe that an ESB may no longer be eligible for Certification or that a substantial change has occurred in the ownership or operation of the business, it may further investigate the current position of the ESB and its owners.
- 6) **Extensions.** At its discretion, upon written request, CDOT may provide an extension for renewal for one month past the Renewal of Certification date. Such extension is valid only if confirmed in writing. A request for an extension will only be granted when the ESB has demonstrated extenuating circumstances requiring an extension. CDOT will not grant extensions for successive Renewal of Certification periods. If an ESB that is also a DBE is granted an extension for a DBE renewal, such extension does not apply to the firm's ESB Renewal of Certification date unless specifically stated in writing.

E. Revocation

- 1) **Intent to Revoke Letter.** Except in the case of debarment or conviction of a bid related crime, if CDOT determines that there are reasonable grounds to revoke the Certification of an ESB, CDOT shall send the ESB notice of its intent to revoke. The ESB shall have fifteen (15) days from the date the notice was issued to contest the revocation in writing. If the ESB does not respond within the fifteen (15) days, the revocation shall become effective upon the expiration of such period. If CDOT does receive a written contest from the ESB, revocation becomes effective upon such date. However, as a confirmation, CDOT will send the ESB a letter of revocation.
- 2) **Good Cause Required.** If the Intent to Revoke is based upon failure to renew, the ESB must demonstrate good cause for failing to timely submit completed documentation.
- 3) **Effect on Contract Participation.** The ESB shall be eligible to perform on and count toward the ESB incentives on all Contracts while revocation is pending in accordance with the contract terms.
- 4) **Appeals.** Revocation of Certification shall be appealable in accordance with CRS §§ 24-4-104 and 105.

F. Restricted Contracts

- 1) **Generally.** Subject to all applicable state and federal laws, CDOT may restrict certain Contracts for award to ESB Consultants and Contractors, joint ventures of which ESBs are a member, and ESB mentor-protégé participants where the contract award is expected to be \$1,000,000 or less.
- 2) **Establishing Objectives.** During the review and determination of its tri-annual DBE overall goal, CDOT will also develop target objectives for restricted contracts. These targets shall be based upon projected upcoming work, availability of qualified prime ESBs to perform such work, the amount of ESB participation being generated through other means, and the impact of restriction on other objectives of CDOT.
- 3) **Restriction Process.** All eligible projects will be evaluated by the applicable CDOT regional office to determine whether they meet the criteria for restriction, which includes:

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- a. A sufficient number of qualified ESB primes are available to perform the work;
- b. Without restriction, the available qualified ESB primes would not be able to successfully compete for award of the Contract; and
- c. Restriction of the contract will not eliminate competition for award or compromise the quality of the work to be provided under the Contract.

G. Restricted Items

- 1) **Generally.** Subject to all applicable state and federal laws, CDOT may restrict certain items within Contracts for award only to ESB Consultants and Contractors, joint ventures of which ESBs are a member, and ESB mentor-protégé participants.
- 2) **Criteria for Restriction.** CDOT may decide to restrict items within a project based upon, but not limited to, the following:
 - a. The size and type of Contract to be awarded;
 - b. The subcontracting opportunities within such Contract;
 - c. Whether the subcontracting items can be clearly delineated from other items within the Contract;
 - d. The number of qualified ESBs available to fulfill the subcontracting opportunities; and
 - e. The potential for adequate competition among qualified, available ESBs.

H. Reporting

- 1) With the tri-annual DBE goal analysis, CDOT shall review and report on the participation of and prospective opportunities for ESBs.
- 2) At a minimum, on an annual basis, CDOT shall report the following to the DBE Committee of the Transportation Commission:
 - a. The number and total dollar amounts of contracts and subcontracts awarded to ESBs;
 - b. The training, technical assistance and outreach provided by CDOT and other entities to ESBs;
 - c. The effectiveness of the ESB Program incentives; and
 - d. Other changes or progress in the ESB Program.