



Colorado Department of Transportation
Engineering Contracts Unit
2829 West Howard Place, 3rd Floor
Denver, Colorado 80204

SOLICITATION FOR PROFESSIONAL CONSULTANT SERVICES

Date: September 20, 2018

Project: Region 1 PS I-70 WB Peak Period Shoulder Lane Construction Management, Construction Inspection and Materials Testing Engineering Services.

Project Number: NHPP 0703-445 (21893)

Thank you for your interest and response in performing engineering services for the above-captioned project of the Colorado Department of Transportation (CDOT). By submitting a Proposal on this project, the consultant agrees to the process described herein.

1. DESCRIPTION:

CDOT will be hiring **one (1) Consultant** for this project to provide **Region 1 Project Specific I-70 WB Peak Period Shoulder Lane Construction Management, Construction Inspection and Materials Engineering Services.**

Please see the Scope of Work for a detailed description of the services solicited.

Contact Information

RFP/Selection Process: Cynthia Gallegos, (303) 757-9306

Scope of Work: Jeff Hampton, (720) 497-6957

Prequalification: Darrell Wells, (303) 757-9215

DBE/ESB Program: Erica Downey, (303) 512-4144

2. SUBMITTAL DEADLINE AND SCHEDULE OF KEY EVENTS:

Proposal Submittals must be received no later than **12:00 noon** local time on **Thursday October 11, 2018**. Please submit electronically through the CDOT Portal. Please contact: Louis Wynn with the Suss Portal Help Desk at louis.wynn@state.co.us or 303-757-9848 with any issues submitting electronically.

Proposers are required to meet the date set for the submission and Interviews, if applicable. Failure to meet these dates will result in the Proposal being considered non-responsive.



KEY EVENTS SCHEDULE

PUBLIC NOTICE PHASE	
First Advertisement	September 20, 2018
Second Advertisement	September 27, 2018
Third Advertisement	October 4, 2018
Submit Proposal	October 11, 2018 (12PM)
SELECTION PHASE	
Panel Meeting*	October 25, 2018
Chief Engineer Selection/Approval	October 29, 2018
Notification	October 29, 2018
SELECTION PHASE	
Submit Contract Compliance Package	November 13, 2018
Fee Negotiation	November 13, 2018
Audit Completed	November 15, 2018
FINAL CONTRACT PHASE	
Contract Approval/Execution	December 4, 2018

* If option to interview is exercised, interviews will be scheduled approximately 2 weeks after the panel meeting, and all subsequent dates will be moved back by 2 weeks.

3. SPECIAL REQUIREMENTS:

All respondents accept the conditions of this RFP, including, but not limited to, the following:

- A. Prequalification: All parties submitting a proposal must be prequalified at least seven calendar days prior to the Proposal submittal date. Pre-qualification must be done annually. The prime firm or a member of its team must be prequalified in the following disciplines: Construction Management (MC) and Material Testing (MT).
- B. Master Pricing Agreement: All Consultants and subconsultants must have a valid Master Pricing Agreement (MPA) with CDOT prior to award of contract.
- C. Late Proposals: Any proposal received by CDOT after the time specified in **Section 2 Key Events Schedule** shall be considered late and will be rejected. No late proposals will be accepted for this project.
- D. Non-Responsive Proposals: CDOT reserves the right to reject any or all proposals. Proposals that do not meet the Minimum Proposal Requirements listed in **Section 4** will be rejected as non-responsive.
- E. Consultant Costs: Except for provided in **Section 7** of this document no reimbursement will be made by CDOT for any costs related to the preparation of the Proposal, required documentation, interviews, presentations, discussions, and/or any related activities. These costs are the sole responsibility of the Proposer. CDOT shall not be liable for any costs incurred by respondents in the preparation of submittals and proposals, nor in costs related to any element of the selection and contract negotiation process.
- F. Interviews: Optional. CDOT may hold interviews for this consultant selection. From those firms submitting a Proposal, CDOT will short-list three firms and will make the final selection from the highest scoring firms, including interview scores if the option is exercised.
- G. Licensure: All work is to be performed under the direction and supervision, as appropriate to the task, of a Colorado-Licensed Professional Engineer, Architect, or Land Surveyor as required by the Colorado Department of Regulatory Agencies. For additional guidance, please see: https://www.colorado.gov/pacific/dora/AES_Laws.
- H. Self-Performed Work: To be a Prime Consultant on a contract, the Prime Consultant must provide at least 30% of the work themselves.
- I. Method of Payment: Cost Plus Fixed Fee (CPFF) method of payment shall be used for all Task Order work **unless** (1) the nature of the work directed is appropriate to Specific Rate of Pay (SRP) payment method (such as construction management services, research & development, and staffing support services); (2) the payment method is approved by the CDOT Project Manager and Contracting Officer; and (3) the payment method is reflected in the Task Order Proposal at the time of execution.
- J. Software Requirements: All consultants are required (where applicable) to use the following software packages, which are currently used by CDOT:
- (i) INROADS for project design
 - (ii) Microstation for project drafting

- (iii) ArcView for Water Quality data
- (iv) LIMS
- (v) Microsoft Project or Primavera

K. Non-discrimination: The Consultant, with regard to the work performed by it during the contract term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

L. Conflict Disclosures: The Proposer will include a full disclosure of all potential organizational conflicts of interest in the Proposal. By submitting its Proposal, each Proposer agrees that, if an organizational conflict of interest is thereafter discovered, the Proposer will make an immediate and full written disclosure to CDOT that includes a description of the action that the Proposer has taken or proposes to take to avoid or mitigate such conflicts.

M. Open Records Act Notice: Except for consultant audit and Master Pricing Agreement information, all records, documents, drawings, plans, specifications, and other materials relating to the conduct of CDOT business, including materials submitted by Proposers in response to this solicitation, are subject to the provisions of the Colorado Open Records Act (C.R.S. 24-72-201, et seq) and any other laws and regulations applicable to the disclosure of documents submitted under this RFP. Such laws govern CDOT's use and disclosure of records. Please see CDOT Policy Directive 508.2 for guidance.

Each Proposer is advised to contact its own legal counsel concerning the Colorado Open Records Act, other applicable laws, and their application to the Proposer's own circumstances.

In the event of litigation concerning the disclosure of any materials submitted by the Proposer. CDOT's sole involvement will be as a stakeholder retaining the material until ordered by a Court, and the Proposer shall be responsible for otherwise prosecuting or defending any action concerning the materials at its sole expense and risk.

All submittals will become the property of CDOT, will not be returned, and will be disposed of according to Department policies. Successful proposals will be considered part of the contract document after award.

Automatic redactions: not applicable.

4. MINIMUM SOI REQUIREMENTS

As indicated in the advertisements, notice is hereby given to all interested parties that all firms will be required to meet minimum requirements to be considered for these projects. To be considered as qualified and responsive, interested firms shall have, as a minimum:

- A. Submitted their Proposal by 12:00 PM (Noon) on the date shown in **Section 2**.
- B. Be pre-qualified with the CDOT Contracts and Market Analysis Branch within 7 days of the submittal deadline as shown in **Section 2**. Note: Federal and State regulations require certification by

prospective participants (including contractors, subcontractors, and principals) as to current history regarding debarment, eligibility, indictments, convictions, or civil judgments.

C. Certified that the information and data submitted is true and complete to the best knowledge of the individual signing the cover letter.

D. Included all of the Proposal Submittal sections and adhered to all page limits listed in **Section 6.1**.

5. CDOT'S SELECTION PROCESS:

The Contracting Officer transmits the Proposal package to each panel member through the Salesforce platform. The package includes:

- Proposal Scoring Guidelines
- Draft Scope of Work
- Proposal for each Consultant

Proposal Scoring Activity

Prior to the selection panel meeting the following occurs:

- Every panel member scores every Proposal independently. (90%)
- The Civil Rights & Business Resource Center scores the Affidavit of Small Business Participation in the Proposal for small business participation. (10%)

Selection or Short-list Panel Meeting (90%)

A selection panel meeting is held to compile scores and discuss the panel member's evaluations of the consultant's Proposal based on the following criteria:

- Project Team – (includes capacity) – 15%
- Firm Capability – 15%
- Past Performance on Similar Projects or Similar Teams – 15%
- Project Goals – 10%
- Project Control – 10%
- Project Concept – 15%
- Project Critical Issues – 10%

The selection panel reaches a consensus ranking of either the selected firm, if there is not going to be an optional presentation and interview phase, or the short list of firms (minimum of the top 3 qualified consultants), if there is going to be a presentation and interview phase.

Presentation and Interview Selection Panel Meeting

If the panel elects to exercise their option to interview the short-listed teams, the short-listed firms will have approximately two weeks to prepare their presentation for their interview with the selection panel. The purpose this meeting is to allow consultants time to present their analysis of the project and to allow the panel time to clarify the consultant's qualifications in a question and answer session.

In selections including an Interview Phase, the interview scores count for 20% of the overall score. Other scoring factors from the pre-shortlist evaluation and the shortlist meeting are adjusted accordingly.

Final Selection

In making the final selection recommendation to the Chief Engineer, the panel reaches consensus on the ranking of the selected firm(s). The panel provides its recommendation to the Contracting Officer, who obtains the concurrence of CDOT's Contract Administrator. Then the Contracting Officer provides selection documentation, including the board's ranking, to the Chief Engineer for approval. The Chief Engineer's approval is necessary before proceeding with selection notification.

6. SOI INSTRUCTIONS:

A. SECTIONS

1. Cover or Introductory Letter (1 page limit - 8 1/2 x 11 paper)
2. Statement of Interest Section (5 page limit, 8 1/2 x 11 paper)
3. Work Plan Section (5 page limit – 4 pages 8 1/2 x 11 paper and 1 page 11x17 paper)
4. Small Business Participation Section (1 page limit - 8 1/2 x 11 paper)

B. COVER OR INTRODUCTORY LETTER

1. Address the cover or introductory letter to the Contracting Officer:

Cynthia Gallegos, Contracting Officer
2829 West Howard Place, 3rd Floor
Denver, Colorado 80204

2. Include the following elements of information in the letter as a minimum and highlight these items in bold letters.
 - a) The name of the contract opportunity/RFP to which you are responding.
 - b) Project number and project location, if applicable.
 - c) Statement that the firm is pre-qualified with CDOT and the firm's pre-qualification expiration date.
 - d) Certification that the information and data submitted is true and complete to the best knowledge of the individual signing the letter.
 - e) Name, telephone number, e-mail address and fax number of the individual to contact regarding their SOI/WP submittal.
 - f) CDOT requires signature by an authorized principal, partner, or officer of the firm.
3. No substantive information shall be included in the cover letter. Information provided in cover letters will be used for responsiveness review only and shall not be scored by the evaluation panel.

C. STATEMENT OF INTEREST (SOI)

1. The following outline is to aid you in preparing your SOI. Your responses to the elements of this outline should demonstrate the knowledge and expertise your firm brings to the project.

- a) Project Team

- (1) Identify Your:

- (a) Project Principal
- (b) Project Manager
- (c) Key Staff
- (d) Sub-consultants

- (2) Present a brief discussion regarding how the team's qualifications and experience relate to the Scope of Work.

- (a) Include the following:

- i. Principal's level of involvement in the project(s)
- ii. Qualifications and relevant individual experience of prime and sub-consultant team
- iii. Unique knowledge of team members related to the Scope of Work
- iv. Commitment of time and availability of key staff members
- v. Length of time with the firm for each key team member
- vi. Experience on similar projects as a team

- b) Firm (Prime) Capability

- (1) Address the firm's size and the disciplines of technical staff.

- (2) Include the firm's relevant experience and accomplishments as a Prime Consultant that were not listed in the project team section.

- (3) Outline computer software availability and its compatibility with CDOT software. All consultant are **required where applicable** to use the following software packages, which are currently used by CDOT.

- (a) INROADS for project design
- (b) Microstation for project drafting
- (c) ArcView for Water Quality data

- (4) Indicate the Consultant's availability to do the project concurrent with existing and projected workloads.

- (5) Consider including the following:



- (a) Graphs depicting firms capacity to do the project
 - (b) Information on the sub-consultant's role
 - (c) The sub-consultants function and integration into the team
 - (d) Match of personnel to the existing and future workload
- c) Past Performance on Similar Projects or Similar Teams
- (1) List current and past projects completed within the past three years with CDOT.
 - (2) List similar project which are on-going or completed within the past three years for other agencies.
 - (3) Demonstrate your firm's or team's ability to do the following for project listed above:
 - (a) Control costs
 - (b) Meet schedules
 - (c) Provide quality work.
 - (4) Include the project name, project manager's name and telephone number for all projects listed above.
 - (5) Describer your firm's role for all the projects listed above.

D. WORK PLAN SECTION

1. The following outline is to aid you in preparing your Work Plan. Your responses to the elements of this outline should demonstrate the knowledge and expertise your firm brings to the project.
 - a) Project Goals
 - (1) Indicate the following:
 - (a) Your firms understanding of the project goals.
 - (b) A list of deliverables required on the project.
 - (c) For non-project specific selections, which have no identified tasks, describe a hypothetical project or the approach you have taken on a project similar to the work described in the Scope.
 - b) Project Control
 - (1) List the names of staff members responsible for the following items and describe how they plan to manage them.
 - (2) Cost Control

- (a) Controlling consultant contract costs.
- (b) Controlling construction costs to stay within the budget.

(3) Quality Control

- (a) Insuring that CDOT procedures are followed.
- (b) Insuring that project plans, specifications and estimates are free of errors and meet CDOT and other agency standards.
- (c) Scheduling:
 - i. Managing the required work to meet the established schedule.
 - ii. For your information, a detailed work hour schedule should **not** be included.

c) Project Concept

(1) Briefly describe the actions you plan to take to achieve the project goals and objectives.

(2) Consider the following items:

- (a) Have you formulated a successful approach to the project?
- (b) Are possible design alternates suggested?
- (c) Have you exhibited sensitivity to general public concerns?
- (d) Have you demonstrated a clear and concise understanding of the project based on the data which has been provided?

d) Critical Issues (Problems and Solutions)

(1) This is your opportunity to present an analysis of the most significant issues that you believe you will have to address in order to successfully complete this contract.

(2) Consider the following points in presenting your analysis:

- (a) Are major problems identified?
- (b) Are the problems significant?
- (c) Are solutions reasonable?

E. SMALL BUSINESS PARTICIPATION

1. Affidavit of Small Business Participation: For more information, in **Section 6** “Disadvantaged Business Enterprise (DBE) & Emerging Small Business (ESB) Requirements” provided below.
2. Note: Letters of intent and/or proof of certification are no longer required to be submitted with the proposal.
3. The Anticipated Participation Plan for Task Orders form is not required with this submission, but will be required with each task order if selected.
4. The Good Faith Effort Form, if required, will not count against the page limit.
5. Contact Erica Downey at 303-512-4144 with questions.
6. This contract is a federally assisted contract.
7. The DBE Goal for this project is: 10%

6. DISADVANTAGED BUSINESS ENTERPRISE (DBE) & EMERGING SMALL BUSINESS (ESB) REQUIREMENTS¹

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.

¹ CDOT, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

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.

1. *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 audit reports to CDOT by the fifteenth (15th) of each month through the B2G software. 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 (a) and the prompt payment terms outlined in subsection (b) 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 Contract Goal at the time of the submission of the statement of interest 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 proposal. Failure to submit the Affidavit of Small Business Participation will result in the Consultant being deemed non-responsive and ineligible for award. In section two (2) 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, task order-based contracts, the Consultant will affirm 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, task order-based 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 result in sanctions unless CDOT determines that the Consultant demonstrated Good Faith Efforts to fulfill the Small Business 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 July 14, 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 expects 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 a 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 expects 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, Task Order-Based Contracts*

CDOT will not award a task order unless the Consultant provides Commitments sufficient to meet the Contract Goal and the 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 the 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 to CDOT a revised Anticipated Participation Plan for Task Orders or a modification request through B2G. The Consultant may not Terminate or Reduce a Commitment without CDOT approval.

a. Before requesting CDOT approval, the Consultant must give the DBE and/or ESB Subconsultant notice in writing of the Consultant's intent to terminate or reduce the Subconsultant's work, and provide a copy of the notice 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, task order-based 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 Anticipated Participation Plan for Task Orders or a modification request through B2G. 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.

CDOT may withhold approval of task orders and/or payment to the Consultant for failure to comply with these requirements.



COLORADO DEPARTMENT OF TRANSPORTATION
AFFIDAVIT OF SMALL BUSINESS PARTICIPATION

Project Name:	DBE Contract Goal:
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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. Participation & Incentive Scoring.

DBE Participation Plan (mandatory):

Work Area	Approximate Percentage of Participation

Small Business Targets (optional for incentive points): Check all that apply and include the number of applicable firms in the underlined blank space. This section will be evaluated for incentive point scoring. Teaming relationships will be tracked starting on July 14, 2016, thus, all relationships can be considered a new relationship starting on this date. To receive credit for new teaming relationships and Level 1 ESB participation, each firm must perform at least \$50,000 or 2% of the work, whichever is less.

- The consultant commits to Level 1 ESB firm(s).
- The consultant commits to DBE/ESB firm(s) not teamed with in the past 3 years.
- The consultant commits to % of ESB participation (The total of all ESB participation should be indicated in the blank space).

Section 3. Affidavit

The Consultant affirms that:

The Consultant shall make good faith efforts to meet the contract goal on the overall contract and each task order. The consultant understands that making good faith efforts to achieve the contract goal is a condition of contract award. The consultant understands that promised participation is a binding obligation of the contract, if awarded. The consultant attests that the information above is true and understands that a fraudulent misrepresentation or failure to make good faith efforts to meet the contract goal or promised participation may result in the withholding of progress payments, reduction of prequalification status, referral of the matter to the Office of Inspector General of the US DOT, and/or other contractual remedies.

By signing below, the consultant affirms that the statements made in this document are true and complete.

I, _____, am the _____ of _____.

(Name) (Title) (Consultant Company Name)

_____ (Signature) _____ (Date)

7. Consultant Selection Protest Rules

Protests will be handled as follows:

- a) Any actual or prospective consultant who is aggrieved in connection with a solicitation or award of a contract may protest to the Chief Engineer. The protest shall be submitted in writing within seven working days after the aggrieved person knows or should have known of the facts giving rise to the protest.
- b) The Chief Engineer or designee shall have the authority to settle and resolve a protest of a consultant, actual or prospective, concerning the solicitation or award of a contract. A written decision regarding the protest shall be rendered within seven working days after the protest is filed. The decision shall be based on and limited to a review of only those issues raised by the aggrieved consultant, and will set forth each factor taken into account, in reaching the decision. The decision will constitute the final agency action of the Colorado Department of Transportation regarding the protest.
- c) Entitlement to costs: When a protest is sustained by the Chief Engineer or designee, or upon administrative or judicial review, and the consultant should have been awarded the contract under the solicitation, but was not, the protestor will be entitled to reasonable costs incurred in connection with the solicitation, including SOI/WP preparation costs. No other costs or fees will be permitted or awarded, and reasonable costs and fees will not include attorney's fees.