



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

SOLICITATION FOR PROFESSIONAL CONSULTANT SERVICES

Date: January 21, 2021

Project: Headquarters Non-Project Specific Disputes & Claims Engineering Services.

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 up to two (2) Consultants for this project to provide **Headquarters Non-Project Specific Disputes & Claims Engineering Services**.

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

Contact Information

RFP/Selection Process: Cardon Brandt, (303) 757-9398, cardon.c.brandt@state.co.us

Scope of Work: Karen Sullivan, (303) 757-9502, karen.sullivan@state.co.us

Prequalification: Darrell Wells, (303) 757-9215, darrell.wells@state.co.us

DBE/ESB Program: Karen Fujii-Martin, (303) 512-4016, karen.fujii-martin@state.co.us

2. SUBMITTAL DEADLINE AND SCHEDULE OF KEY EVENTS:

Proposal Submittals must be received no later than **12:00 noon** local time on **February 11, 2021**. Please submit electronically through BidNet at <https://www.bidnetdirect.com/colorado/colorado-department-of-transportation>. Please contact BidNet Direct support for help at (800) 835-4603 with any issues submitting electronically. Hard copies are longer accepted by CDOT.

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	January 21, 2021
Second Advertisement	January 28, 2021
Third Advertisement	February 4, 2021
Submit Proposal	February 11, 2021, 12pm MT
SELECTION PHASE	
Panel Meeting*	February 25, 2021
Chief Engineer Selection/Approval	March 4, 2021
Notification	March 8, 2021
SELECTION PHASE	
Fee Negotiation	March 12, 2021
Submit Contract Compliance Package	March 16, 2021
Audit Completed	March 19, 2021
FINAL CONTRACT PHASE	
Contract Approval/Execution	April 16, 2021

* 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 (Prime and Sub Consultants) submitting as a team member on a proposal must be prequalified at least seven calendar days prior to the Proposal submittal date. Pre-qualification must be done annually. The recommended disciplines based on the scope of work: Civil Engineering (CE).
- 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. 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.
- G. Self-Performed Work: To be a Prime Consultant on a contract and per 49CFR part 26 and administration of DOT assisted contracts, the Prime Consultant is required to provide at least 30% of the work themselves.
- H. CDOT Policy Directive 23 – Consultant Utilization for Design and Construction: The firm that performed final design services and any consultants (prime or sub) team members that performed more than 20% of the work will not be allowed to submit a proposal for construction management services unless the Chief Engineer has waived the policy for the project.
- 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 (SROP) 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) LIMS
- (ii) Microsoft Project or Primavera
- (iii) ProjectWise (a/k/a ProjectWise Explorer)
- (iv) B2GNow System for DBE/ESB tracking and prompt payment

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

M. 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.

N. 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.



O. 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.

P. 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 B2GNow software. If no payment has been made, the Consultant shall document this in the prompt payment audit report.

Q. Subcontract Terms: The assurance provided in section (P) and the prompt payment terms outlined in Section Q shall be included in all subcontracts or other agreements for the performance of work on the contract.

R. Electronic Signatures: CDOT utilizes DocuSign for contract execution and all subsequent contracting documents. For additional guidance, please see: <https://www.colorado.gov/pacific/osc/electronic-signature-contracts-and-grants>.

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 Engineering Contract Services 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 (CRBRC) 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 –35%
- ❑ Firm Capability – 35%
- ❑ Approach – 20%

Small Business Participation (10%)

The CRBRC scores the Proposal based on a variety of factors pertaining to small business participation and contract compliance oversight. This is a NPS contract and the CRBRC will score the Proposal according to the rubric outlined in Section 7 below.

Selection Panel Meeting

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: (Minimum Font Size: 11)

A. SECTIONS

1. Cover or Introductory Letter (1 page limit - 8 1/2 x 11 paper)
2. Statement of Interest Section (4 page limit, 8 1/2 x 11 paper)
3. Approach Section (1 page limit - 8 1/2 x 11 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:

Cardon Brandt, 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, Vendors/Suppliers

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

(3) Include the following:

- a. Principal's level of involvement in the project(s)
- b. Qualifications and relevant individual experience of prime and sub-consultants
- c. Unique knowledge of team members related to the Scope of Work
- d. Availability of key staff members
- e. Length of time with the firm for each key team member
- f. 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 are not listed in the project team section.

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

(4) 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
- e. Succession planning

D. APPROACH

1. Address the team's approach to the type(s) of services as described in the attached Scope of Work.



E. SMALL BUSINESS PARTICIPATION

1. Include detailed narrative of items of scoring criteria on one page limit. For more information, see **Section 7, III** below.
2. Affidavit of Small Business Participation: For more information, see **Section 7, II** below. Will not count against the page limit.
3. Letters of intent and/or proof of certification are no longer required to be submitted with the proposal. Letters of intent and PCWs will be required at task order level.
4. The Professional Services Good Faith Efforts Report, if applicable, will not count against the page limit.
5. This contract is a federally assisted contract. No DBE goal will be set if the contract is entirely state funded.
6. The DBE Goal for this NPS project is 0%.
7. Other Professional Services forms for contract can be found at: <https://www.codot.gov/business/civilrights/compliance/support>.
8. Contact Karen Fujii-Martin at 303-512-4016 or karen.fujii-martin@state.co.us with questions regarding the small business section or B2GNow software system.

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

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

I. Definitions

Advisory Contract Goal. The default percentage of participation by DBEs on each Task Order issued under the Master Contract. This percentage may be modified on a per Task Order basis only upon a goal reevaluation request by the Consultant and subsequent approval and goal modification by CDOT.

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

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 firm on a Task Order in order for participation to count toward a Task Order Goal.

Consultant. An individual, firm, corporation, or other legal entity with a direct contractual relationship with CDOT to render Professional 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 Task Order Goal, 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.

Master Contract. Overarching agreement between CDOT and the Consultant, whereby the Consultant will be compensated in exchange for providing Professional Services and ancillary services on an as-needed basis.

Professional Services. The practice of architecture, engineering, professional land surveying, landscape architecture, and industrial hygiene as defined in Colo. Rev. Stat. 24-30-1402.

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

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

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.

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

Task Order Goal. Percentage of the Task Order established by CDOT for participation by DBEs on a Task Order.

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

Utilization Plan. Documentation of Subconsultant and Vendor/Supplier participation. The Master Contract Utilization Plan details all Subconsultants and Vendors/Suppliers included as part of the proposal team. The Master Contract Utilization Plan must be submitted by the Consultant in B2GNow and approved by CDOT within five (5) days of selection and before any Task Order requests will be



reviewed for approval. The Task Order Utilization Plan details all of the Consultant's Commitments on a Task Order. The Task Order Utilization Plan must be submitted by the Consultant in B2GNow and approved by CDOT before a Task Order can be approved. Task Order Utilization Plans may not be modified unless approved by CDOT.

Vendor. Participant on a CDOT Professional Services contract that is providing services not considered to be a Professional Services as defined in Colo. Rev. Stat. 24-30-1402.

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 (NAICS) code plus a descriptor. Work codes are listed on a firm's profile on the Colorado UCP DBE Directory. The consultant may contact the Civil Rights & Business Resource Center (CRBRC) to receive guidance on whether a work code covers the work to be performed.

II. Master Contract Commitment

At the time of initial proposal, the Consultant must make a contractually binding guarantee to meet the Task Order Goal for each Task Order issued under the Master Contract in accordance with 49 CFR 26.53.

1. *Affidavit of Small Business Participation.* The Affidavit of Small Business Participation is the Consultant's contractually binding guarantee to meet the Task Order Goal for each Task Order issued under the Master Contract. The Affidavit of Small Business Participation 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.
2. *Master Contract Utilization Plan.* Within five (5) days of selection as the "most qualified" proposer, the Consultant will receive a notice from CDOT to complete and submit a Utilization Plan via B2GNow. In order to complete the Utilization Plan, the Consultant shall list all Subconsultants and Vendors/Suppliers included as part of its "most qualified" team, including all DBE, ESB, and nonDBE/ESB firms. Requests to approve Task Orders under the Master Contract will not be reviewed until there is a Master Contract Utilization Plan approved by CDOT in the B2GNow system.

III. Scoring

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



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



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

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

To receive points associated with the CDOT Mentor-Protege Program, both the Mentor and their Protege shall be included in the proposal. The firms must be an active program participant or be less than one (1) year post-graduation following the completion of the complete two (2) year program. The Consultant must provide written documentation within the Strategic Small Business Participation Plan evidencing active participation in the program (i.e. dates met with program partner, current team goals, written statement detailing progress made toward the established team goals, etc.). Acceptance into the CDOT Mentor-Protege Program will not be considered evidence of active participation in the program without additional documentation of the firm's activities as a program participant.

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

IV. Task Order Process

CDOT will review a task order the Consultant provides to ensure commitments are sufficient to meet the DBE Contract Goal and ESB participation Small Business Targets for the overall contract, or otherwise demonstrate Good Faith Efforts. The Civil Rights Office may withhold approval and/or request additional information if the Consultant is not on track to meet its small business targets.

With each task order proposal, the Consultant shall submit an *Anticipated Participation Plan for Non Project Specific Task Orders and Good Faith Efforts Report Form* 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. The Consultant may submit a *Professional Services Reevaluation of DBE Goal Form* if the Consultant feels the Master Contract Advisory Contract Goal cannot be reached. The Consultant understands the goal may be reduced, may be set higher or stay the same as the Master Contract Advisory Goal in the reevaluation.

The Project Cost Worksheet (PCW) shall constitute confirmation of the Commitment by the DBE or ESB Subconsultant. The Consultant must submit a Letter of Intent (LOI) or rate sheet



confirming the Commitment for any Vendor/Supplier Subconsultant for which a PCW is not provided.

1. *Task Order Utilization Plan Approval.* Within three (3) days of a Task Order request, the Consultant will receive a notice from CDOT to complete and submit a Task Order Utilization Plan via B2GNow. In order to complete the Task Order Utilization Plan, the Consultant shall list all Commitments on the Task Order. The Consultant shall also upload in B2GNow a Project Cost Worksheet, which shall constitute confirmation of all Commitments. The Consultant must submit a Letter of Intent or rate sheet confirming the Commitment for any Vendor/Supplier Subconsultant for which a Project Cost Worksheet is not provided.

2. *Task Order Good Faith Effort Requirement.* A Task Order under the Master Contract will not be approved by CDOT until the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal. Good Faith Efforts mean that the Consultant (i) documents it has obtained enough DBE participation to meet the Contract Goal, or (ii) documents that it made adequate good faith efforts to meet the Contract Goal, even though it did not succeed in obtaining enough DBE participation to do so.

a. If, on a task order the Consultant has not obtained 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 *Professional Services Good Faith Efforts Report Form* and supporting documentation. If the Region Civil Rights Office determines that the Consultant has made Good Faith Efforts to meet the Contract Goal, the CRBRC will approve the Task Order Utilization Plan.

b. If the total eligible DBE participation submitted in the Task Order Utilization Plan does not meet the Contract Goal, the Civil Rights Office will conduct a review to determine whether the Consultant has demonstrated Good Faith Efforts to meet the Contract Goal even though it did not succeed in obtaining enough DBE participation to do so. As part of this review, the Consultant will be required to provide documentation of its efforts to secure DBE participation on the Task Order or submit a *Professional Services DBE Participation Plan Modification Request Form* to be approved by CDOT. See Section VI, Utilization Plan Modifications.

c. In conducting Good Faith Effort reviews, the Civil Rights Office will utilize the guidance found in Appendix A to 49 CFR Part 26, where applicable. The Civil Rights Office may also consider, but is not limited to, the following factors in evaluating the Consultant's Good Faith Efforts:



- i. Performance of other consultants in meeting the Contract Goal on Task Orders that have a similar scope of work, contract amount, location, and time frame;
- ii. Reason(s) for choosing a nonDBE subconsultant over an interested DBE;
- iii. Documentation of DBEs solicited by the Consultant and verification from the DBEs that they were actually contacted by the Consultant, including DBE firms outside of the “most qualified” team in the event that DBE team members are unavailable or unwilling to participate on the Task Order being reviewed for approval;
- iv. Past performance by the Consultant, including on prior Task Orders under the specific Master Contract at issue and other CDOT contracts;
- v. Any other factors that may be pertinent to the factual circumstances.

If the Civil Rights Office determines that the Consultant has made Good Faith Efforts to meet the Contract Goal, the CRBRC will approve the Task Order. The determination of the Region Civil Rights Office may be appealed to the Civil Rights and Business Resource Center.

3. *Administrative Reconsideration.* If the Civil Rights Office determines that the Consultant did not demonstrate Good Faith Efforts to meet the Contract Goal, it will provide the Consultant with written notice of its determination and an opportunity for administrative reconsideration.

a. Administrative reconsideration will be conducted by the CRBRC. The Consultant will have five (5) days from the written notice to request administrative reconsideration of an adverse Good Faith Efforts determination. The request shall include the basis for reconsideration and any supporting documentation that the Consultant would like to be considered as part of the reconsideration. It should also specify whether the Consultant is requesting an informal, in-person or telephonic hearing with CDOT to address the issues in the Civil Rights Office’s Good Faith Efforts determination. If a request for an informal hearing is not made, the Consultant will be deemed to have waived this opportunity.

b. Upon a hearing request, the CRBRC will establish a date and time for the hearing and send written notice via email to the appropriate Civil Rights Office and the Consultant at least two (2) business days in advance of the hearing. If schedules permit, the parties may waive the two-day requirement. The administrative reconsideration official may request additional documentation from the Consultant and/or the appropriate Civil Rights Office. A copy of all requests and responses should be provided to the other party and the other party shall be given an opportunity to respond.



- c. The CRBRC shall issue the final determination as to whether the Consultant made Good Faith Efforts to meet the Contract Goal. The determination will be in writing and explain the basis for the CRBRC's decision regarding whether or not the Consultant demonstrated Good Faith Efforts to meet the Contract Goal. The Good Faith Efforts determination of the administrative reconsideration official is not appealable.

V. Eligible DBE Participation

In order to count towards the Contract Goal, (i) the work performed by the DBE Consultant, Subconsultant, or Vendor/Supplier must be identified in an approved Commitment, and (ii) the Consultant, Subconsultant, or Vendor/Supplier must be DBE certified in the committed work upon submission of the Commitment and approval of the Task Order.

CDOT will evaluate whether the work it is committed to perform can reasonably be construed to fall within the work areas for which the DBE Consultant, Subconsultant, or Vendor/Supplier is certified.

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

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

- a. The Consultant may count 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 assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance on the Task Order, provided that the fee or commission is determined by CDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- b. When a DBE subcontracts part of the work of its contract to another firm, individual, or entity, the value of the subcontracted work may only be counted if the subcontractor is also a DBE certified firm. Work that a DBE subcontracts to a non-certified firm does not count. DBE firms may use an employee leasing company. Such participation will count only 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. 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.

c. When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the Task Order equal to the distinct, clearly defined portion of the work of the Task Order that the DBE performs with its own forces may count toward the Task Order Goal. In order to receive credit, the joint venture agreement must be submitted as an attachment in the utilization plan submitted through B2GNow for review and approval by CDOT.

2. A DBE must be performing a Commercially Useful Function, as defined by 49 CFR 26.55(c), in order for its participation to count towards the Contract Goal.

a. To perform a Commercially Useful Function, the DBE must be responsible for the execution of the work to be performed on any Task Order and actually performing, managing, and supervising the work.

b. In evaluating whether a DBE is performing a Commercially Useful Function, CDOT will consider factors, including but not limited to, the amount of subcontracted work, industry practices, and whether payment to the DBE is commensurate with the work for which the DBE is claiming credit, and any other relevant factors.

c. A DBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, through which funds are passed in order to obtain the appearance of DBE participation.

d. A DBE Subconsultant, or Vendor/Supplier is presumed as not performing a Commercially Useful Function when it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the work it is contracted to perform with its own workforce, or the DBE subcontracts a greater portion of its work than would be expected based on normal industry practice for the type of work involved.

e. DBE Consultants are also presumed as not performing a Commercially Useful Function when it does not perform or exercise responsibility for at least thirty (30) percent of the total cost of the Master Contract. In these circumstances, the DBE may present evidence to CDOT in order to rebut the presumption.

f. CDOT's determinations regarding commercially useful function matters are not appealable.

VI. Utilization Plan Modifications



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

a. *Notice to Subconsultant.* Before requesting CDOT approval, the Consultant must give the DBE Subconsultant notice in writing of the Consultant's intent to Reduce, Substitute or Terminate the Subconsultant's work through the *Professional Services Non Project Specific (NPS) DBE Participation Plan Modification Request* form. Unless otherwise waived in writing by the DBE, the Consultant must give the DBE five (5) days to respond to the Consultant's notice and advise CDOT of the reasons, if any, that it objects to the proposed Reduction, Substitution or Termination 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 firm may also voluntarily waive the response period.

b. *Good Cause Requirement.* A Consultant must demonstrate Good Cause before a request for Reduction, Substitution or Termination can be approved by CDOT. Good Cause does not exist if Reduction, Substitution or Termination of a DBE is sought solely so that the Consultant can self-perform the work for which the DBE was engaged or so that the Consultant can substitute another firm to perform the work. In evaluating whether Good Cause exists, CDOT will consider, but is not limited to, the following factors:

- i. Changes in the scope of work or scheduling that directly impacts the work committed to the DBE;
- ii. Failure or refusal by the DBE to execute a written contract;
- iii. Failure or refusal by the DBE to perform the work of its subcontract consistent with normal industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Consultant or one of its Subconsultants;
- iv. The DBE fails to meet reasonable, nondiscriminatory insurance requirements;
- v. The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
- vi. The DBE is ineligible to work because of suspension or debarment proceedings or other state law;
- vii. The DBE is not a responsible Consultant;
- viii. The listed DBE voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- ix. The listed DBE is ineligible to receive credit for its participation;
- x. The DBE owner dies or becomes disabled and the firm is unable to complete the work it is committed to perform;
- xi. The DBE ceases business operations or otherwise dissolves;
- xii. Other documented good cause reasons determined by CDOT to compel the termination of the DBE Subconsultant.

2. *Good Faith Effort Requirement.* When a Commitment is Reduced or Terminated (including when a DBE withdraws), the Consultant shall make Good Faith Efforts to find another



firm to replace the DBE whose committed work has been Terminated or Reduced up to the Task Order Goal. The replaced committed work may be in any current or added work area.

a. For DBE firms that are Terminated or whose work is Reduced, the Consultant shall make Good Faith Efforts to find another DBE to perform at least the same amount, but not necessarily the same type of work under the Task Order as the participation that was Terminated or Reduced up to the Task Order Goal.

b. Prior to making a DBE substitution, the Consultant must submit a *Professional Services Non Project Specific (NPS) DBE Participation Plan Modification Request* form and receive CDOT's approval for the substitution. A Project Cost Worksheet, or a Letter of Intent for Subconsultants, Vendors/Suppliers must be submitted for each substitute DBE approved by CDOT.

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

VII. Enforcement

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

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

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 participation or any other business arrangement determined by CDOT to be unallowable, or if the Consultant engages in repeated violations, falsification or misrepresentation, CDOT may:

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



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

A Consultant shall not receive payment for any work performed on the Task Order and resulting from a Substitution not previously authorized by CDOT. If the Consultant fails to meet any Commitments at the conclusion of the Task Order, CDOT will seek reimbursement equaling the difference between the total dollar amount of its Commitments and the total dollar amount of actual payments made to committed DBEs.

CDOT may adjust the total reimbursement amount if the Contractor demonstrates that its failure to meet Commitments was due to circumstances outside of its control. For the purposes of evaluating the reimbursement amounts that will be assessed against the Consultant for not meeting Commitments, CDOT shall consider, but is not limited to, the following:

1. The difference between the total Task Order amount awarded and the actual payments made by CDOT to the Consultant;
2. Any material changes to the Task Order, including the scope of the work, total amount, location, and scheduling;
3. Whether any of the work types associated with a Commitment was self-performed by the Consultant or else performed by another firm;
4. Whether the Consultant was aware of any circumstances that would materially affect its ability to meet its Commitments and took timely and reasonable steps to address it; and
5. Any other relevant considerations

CDOT will provide written notice to the Consultant of any amounts for which it is seeking reimbursement. Consultants must reimburse CDOT within thirty (30) days of the written notice. CDOT may decline to approve future Task Orders under the Master Contract based upon the Consultant's failure to timely reimburse CDOT. Future Task Orders under the Master Contract which are submitted for approval within the thirty-day payment period for reimbursement will not be approved until CDOT is reimbursed by the Consultant for the outstanding amount.

VII. Task Order Closeout

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

8. CONSULTANT SELECTION PROTEST RULES

Protests will be handled as follows:



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- 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.