* 1. *CDOT Form 1414 Anticipated DBE Participation Plan.* Document that lists all of the bidder’s DBE Commitments and submitted with the bid.
	2. *CDOT Form 1415 Commitment Confirmation.* Document confirming the bidder’s Commitments and submitted post-bid.
	3. *CDOT Form 1416 Good Faith Effort Report.* Document that details the actions taken to meet the Contract Goal.
	4. *CDOT Form 1417 Approved DBE Participation Plan.* Document that lists the bidder’s approved Commitments at the time of Contract award.
	5. *C*
	6. in accordance withof this special provision
	7. *(DBE)* specification In the event of a Contract Modification Order which increases the amount of the Contract, as described in Section 6 of this special provision, the Contract Goal shall be based on the Total Earnings Amount.
	8. which
	9. meetSection 4 below
	10. DBE
	11. Contract Modification Orders
1. **Overview.** The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.  When a Contract Goal for DBE participation is set pursuant to the U.S. Department of Transportation’s Disadvantaged Business Enterprise (DBE) Program, the apparent low responsible bidder must show that it has committed to DBE participation sufficient to meet the Contract Goal or has otherwise made Good Faith Efforts to do so in order to be awarded the Contract.

The Contractor’s progress towards the Contract Goal will be monitored throughout the Contract to ensure the fulfillment of the Contractor’s DBE Commitments. Modifications to the Commitments must receive prior approval. If the amount of the Contract increases during the performance of the Contract, the Contractor must make Good Faith Efforts to obtain additional DBE participation to meet the Contract Goal. Final payment to the Contractor may be reduced if the Contractor has failed to fulfill its Commitments and/or make Good Faith Efforts to meet the Contract Goal following an increase in the amount of the Contract. The Contractor may be subject to the withholding of payment and/or other contractual remedies if the Contractor is not complying with the requirements of this special provision.

For general assistance regarding the DBE program and compliance, contact CDOT’s Civil Rights and Business Resource Center (CRBRC) or the CDOT Region Civil Rights Office overseeing the project. For project specific issues, contact the Engineer or CDOT Regional Civil Rights Office.

All forms referenced by this special provision can be found on the CDOT website in the forms library: http://www.codot.gov/library/forms.

1. **Contract Assurance.** By submitting a proposal for this Contract, the bidder agrees to the following assurance and shall include it verbatim in all subcontracts including those with non-DBE firms:

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

1. **Good Faith Efforts.** Good Faith Efforts should include, but are not limited to, reaching out to DBEs that could perform subcontracting opportunities on the Contract, breaking out contract work items into economically feasible units (e.g., smaller tasks or quantities) to facilitate DBE participation even when the bidder/Contractor might otherwise self-perform these items, negotiating in good faith with DBEs and not refusing to utilize a DBE for price alone, and other efforts to obtain DBE participation on the Contract. For additional guidance on making Good Faith Efforts see 49 CFR Part 26 Appendix A.
	1. *Bidding Requirements***.** When a Contract Goal is established, the Contract may not be awarded until the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal by either
* documenting sufficient Commitments to meet the Contract Goal, or
* documenting adequate Good Faith Efforts to meet the Contract Goal even though it did not obtain enough Commitments to do so.

A Commitment may be made to a firm at any tier. The apparent low responsible bidder must have received a quote from a DBE in order to claim a Commitment to a DBE.

1. *Anticipated Participation Plan.* With its proposal, the apparent low responsible bidder shall submit CDOT Form 1414, *Anticipated DBE Participation Plan*, listing its Commitments obtained from DBEs, even if such Commitments do not meet the Contract Goal. If the apparent low responsible bidder has not obtained any Commitments or if the Contract Goal is 0% and the apparent low responsible bidder is electing not to make voluntary Commitments, it shall still submit Form 1414 documenting zero anticipated participation. Failure to submit a signed Form 1414 shall result in rejection of the proposal and the apparent low responsible bidder deemed non-responsive. The apparent low responsible bidder shall ensure that Commitments, and the resulting estimated Eligible Participation, have been properly calculated prior to submitting its proposal. If the apparent low responsible bidder is a DBE seeking Eligible Participation credit for self-performance, the apparent low responsible bidder shall include itself in Form 1414, list the work to be self-performed, and the amount that the bidder intends to count as Eligible Participation.
2. *Utilization Plan.*
	1. *CDOT Advertised Projects*. These projects will require the submission of a DBE Utilization Plan (UP) via B2GNow. The apparent low responsible bidder shall submit the UP within five days of bid opening. In order to complete the UP, the apparent low responsible bidder shall obtain and upload in B2GNow a completed CDOT Form 1415, *Commitment Confirmation*, for each DBE listed on Form 1414. If the total Eligible Participation submitted on the Form 1414 and/or confirmed on Form 1415 did not meet the Contract Goal, the apparent low responsible bidder shall also submit CDOT Form 1416, *Good Faith Effort Report*, with the UP in B2GNow. The Form 1416 should include any supporting documentation which the apparent low responsible bidder would like to be considered as evidence of its Good Faith Efforts. If a non-DBE was selected in lieu of a DBE, the apparent low responsible bidder shall include all quotes from the non-DBE and DBE firms.

The apparent low responsible bidder shall complete Section 1 of the Form 1415 and the DBE shall complete Section 2 of Form 1415. The Commitment in Form 1415 shall be consistent with the Commitment listed on Form 1414. If a Commitment is made to second tier or lower DBE subcontractor, the apparent low responsible bidder maintains responsibility for the fulfillment of the Commitment and shall sign the Form 1415. The apparent low responsible bidder shall not Terminate, Reduce, or Substitute a Commitment listed on Form 1414 without following the procedures outlined in Section 5 below. Increases in the Commitment amount do not require CDOT approval in accordance with the procedures in Section 5 below.

* 1. *Projects Not Advertised by CDOT*. The apparent low responsible bidder shall submit to the project owner a completed CDOT Form 1415, *Commitment Confirmation*, for each DBE listed on the Form 1414 by 4:30 pm on the fifth day after bid opening. If the total Eligible Participation submitted on the Form 1414 and/or Form 1415 does not meet the Contract Goal, the apparent low responsible bidder shall also submit CDOT Form 1416, *Good Faith Effort Report*, along with any supporting documentation of its Good Faith Efforts. If a non-DBE was selected in lieu of a DBE, the apparent low responsible bidder shall include all quotes from the non-DBE and DBE firms.
1. *Good Faith Effort Review Before Award.* The Forms 1414, 1415, and UP (for CDOT advertised projects) will be evaluated to ensure that each Commitment is valid and all Eligible Participation has been properly calculated. The apparent low responsible bidder may be required to provide additional information in order to confirm the accuracy of a Commitment.

If the apparent low responsible bidder’s Forms 1414, 1415, and UP (for CDOT advertised projects) claimed that the Contract Goal was met but the total estimated Eligible Participation of the Commitments does not meet the Contract Goal, the apparent low responsible bidder will be given two working days to amend its Commitments by submitting amended Form(s) 1415 and UP (for CDOT advertised projects). If the total Eligible Participation on the amended Commitments do not meet the Contract Goal, the apparent low responsible bidder shall submit Form 1416 and provide documentation of its Good Faith Efforts.

When the total estimated Eligible Participation of the Commitments does not meet the Contract Goal, the Form 1416 and all supporting documentation will be evaluated in accordance with Appendix A of 49 CFR Part 26. The apparent low responsible bidder will be deemed to not have made Good Faith Efforts if a Commitment lists a DBE for a work area for which the DBE is not certified and the apparent low responsible bidder cannot establish a reasonable basis for its error. Commitments made after submission of the bid will only be considered for acceptance if the bidder demonstrates that (1) Good Faith Efforts were made prior to submission of the bid, and (2) there is reasonable justification for not obtaining sufficient Commitments prior to submission of the bid.

The apparent low responsible bidder will be notified in writing if it is determined that Good Faith Efforts to meet the Contract Goal were not demonstrated. The apparent low responsible bidder may request administrative reconsideration as outlined in subsection 4(a)(4) of this special provision. CDOT will include instructions on how to request administrative reconsideration in the written Good Faith Effort determination.

1. *Administrative Reconsideration*. The apparent low responsible bidder will be provided an opportunity to request administrative reconsideration if it is determined that the apparent low responsible bidder did not demonstrate Good Faith Efforts to meet the Contract Goal. The independent Administrative Reconsideration Official is the CDOT Chief Engineer or her/his designee, provided that such designee did not participate in the original determination. The CRBRC will provide the Administrative Reconsideration Official with a copy of the Good Faith Effort notice issued to the apparent low responsible bidder. The apparent low responsible bidder shall have five working days from the date of the Good Faith Effort determination notice to submit a written request for administrative reconsideration. The written request shall include the apparent low responsible bidder’s basis for reconsideration, including any supporting documentation which it would like to be considered. The written request shall also include a statement as to whether the apparent low responsible bidder would like an in-person or telephonic hearing before the Administrative Reconsideration Official. If the apparent low responsible bidder does not specify a hearing request, the right to a hearing will be waived and administrative reconsideration will be based on the available record, as well as any written documentation provided by the apparent low responsible bidder. If the apparent low responsible bidder requests a hearing, the Administrative Reconsideration Official will establish a date and time for the hearing and send written notice at least two working days in advance of the hearing. The Administrative Reconsideration Official may waive the two-day requirement if holding the hearing sooner is determined to be in the public interest. The Administrative Reconsideration Official may request additional documentation. A copy of all requests and responses shall be provided to all parties. The Administrative Reconsideration Official will issue the final determination as to whether the apparent low responsible bidder demonstrated Good Faith Efforts to meet the Contract Goal. The determination of the Administrative Reconsideration Official is final.
2. *Approval*. Upon a determination that the apparent low responsible bidder has demonstrated Good Faith Efforts to meet the Contract Goal, the apparent low responsible bidder will be issued CDOT Form 1417, *Approved DBE Participation Plan*, or an approved UP in B2GNow (for CDOT advertised projects), documenting the approved Commitments on the Contract.
3. **Commitment Modifications.** The Contractor shall fulfill its Commitments unless the Contractor obtains approval for Termination, Reduction, or Substitution. Unless approved, the Contractor will not be entitled to payment for the work or materials pertaining to an unapproved Termination, Reduction, or Substitution. During the performance of the Contract, the Contractor shall use Form 1420, *DBE Participation Plan Modification Request* to communicate all requests for Termination, Reduction, and/or Substitution. One Form 1420 may include multiple Commitment modification requests and must be submitted to CDOT at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring Termination, Reduction, and/or Substitution. Failure by the Contractor to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or other established remedies.
4. *Good Cause Requirement.* Termination, Reduction, and/or Substitution will not be approved unless the Contractor has Good Cause to modify the Commitment. Good Cause includes, but is not limited to:
	* 1. the DBE fails or refuses to execute a written contract;
		2. the DBE fails or refuses 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 Contractor or one of its subcontractors;
		3. the DBE fails to meet reasonable, nondiscriminatory bond requirements;
		4. the DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
		5. the DBE is ineligible to work because of suspension or debarment proceedings or other state law;
		6. the DBE is not a responsible contractor;
		7. the DBE voluntarily withdraws from the project and provides written notice;
		8. the DBE is ineligible to receive DBE credit for the work required;
		9. the DBE owner dies or becomes disabled and is unable to complete the work;
		10. the DBE ceases business operations or otherwise dissolves; or
		11. other documented Good Cause that compels termination.

Good Cause does not exist if the Contractor seeks Termination so that the Contractor can self-perform the work for which the DBE was engaged or solely so that the Contractor can Substitute another DBE or non-DBE contractor after Contract award. If work Committed to a DBE is eliminated or reduced and such change is not due to and/or initiated by the Contractor, it shall be considered Good Cause for Termination or Reduction. Upon approval of a Termination and/or Reduction, the Contractor will be subject to the Substitution requirements of subsection 5(d) of this special provision.

1. *Notice to the DBE*. The Contractor shall notify the DBE in writing of the Contractor’s intent to Terminate, Reduce, or Substitute and its underlying reason(s) prior to submitting the Form 1420 requesting the proposed Commitment modification. In the notice of intent, the Contractor shall provide the DBE at least five days to respond to the notice and inform the Contractor of the reasons, if any, why it objects to the proposed Commitment modification. The Contractor is not required to provide the five days written notice in cases where the DBE in question has provided written notice that it is withdrawing from its subcontract or purchase order. The notice period may be reduced if determined to be in the public interest by the project owner.

Following the notice period, the Contractor shall submit a Form 1420 to request approval of the proposed Commitment modification, along with written documentation of the notice given to the DBE.

1. *Determination*. The Contractor will be notified in writing of the Good Cause determination and whether the modification request is approved or denied.

1. *Substitution Requirement.* When a Commitment is Terminated or Reduced (including when a DBE withdraws), the Contractor shall make Good Faith Efforts to find another DBE to Substitute for the original DBE. These Good Faith Efforts shall be directed at finding another DBE to perform at least the same amount, but not necessarily the same type, of work under the Contract as the participation that was Terminated or Reduced up to the Contract Goal. To make a Substitution, the Contractor may:
	* 1. Make a new Commitment to any unperformed work on the Contract by providing a completed Form 1415*, Commitment Confirmation* for each new DBE Commitment;
		2. Increase the amount of an existing Commitment for any unperformed work on the Contract by submitting a revised Form 1415 for that Commitment; or
		3. Utilize any Race-Neutral Eligible Participation on the Contract performed prior to the Form 1420 submission as part of its Good Faith Efforts pursuant to this subsection by submitting a completed CDOT Form 1420, *DBE Participation Plan Modification Request*.

If the Contractor has not obtained sufficient Substitutions up to the Contract Goal, the Contractor shall submit evidence of Good Faith Efforts to Substitute via the Form 1416 *Good Faith Effort Report*. The Contractor shall have seven days from the submission date of the Commitment modification request (Form 1420) to submit documentation of its Substitutions and/or Form 1416 evidencing its Good Faith Efforts to obtain sufficient Substitutions despite failing to do so. This period may be extended at the discretion of CDOT.

1. **Contract Modification Orders***.* When one or more Contract Modification Orders, as defined under subsection 101.18 of *CDOT’s Standard Specifications for Road and Bridge Construction*, adds new work items or increases the total dollar amount of the Contract, the Contractor is required to make Good Faith Efforts to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount. Under this section, the Contractor may obtain additional Eligible Participation by:
	* 1. Making a new Commitment to any unperformed work on the Contract by providing a completed Form 1415*, Commitment Confirmation* for each new DBE Commitment;
		2. Increasing the amount of an existing Commitment for any unperformed work on the Contract by submitting a revised Form 1415 for that Commitment;
		3. Utilizing other Eligible Participation on the Contract as part of its Good Faith Efforts pursuant to this Section by submitting a completed CDOT Form 1420, *DBE Participation Plan Modification Request*.

When the Contractor elects to obtain additional Eligible Participation under subpart (iii), such Eligible Participation does not need to be included as part of an approved Commitment. However, it is the Contractor’s responsibility to provide a completed CDOT Form 1420 documenting all additional Eligible Participation obtained under subpart (iii) prior to, or at the time of, Contract finalization.

If the Contractor determines that it will be unable to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount following a Contract Modification Order(s), it shall provide documentation of its Good Faith Efforts to obtain additional DBE participation by submitting a completed CDOT Form 1416, along with any supporting documentation which it would like considered as evidence of its Good Faith Efforts. The CDOT Form 1416 must be submitted within a reasonable time of the Contractor’s initial determination that it will be unable to obtain additional Eligible Participation sufficient to meet the Contract Goal on the Total Earnings Amount. The Contractor may be required to provide additional documentation. The Contractor’s Good Faith Efforts to obtain additional Eligible Participation, or lack thereof, will be considered when assessing any potential payment reductions to the Contractor in accordance with Section 9 of this special provision.

When one or more Contract Modification Orders, as defined under subsection 101.18 of *CDOT’s Standard Specifications for Road and Bridge Construction*, reduces work items or decreases the total dollar amount of the Contract, any approved Commitments on the Contract continue to be binding on the Contractor unless Good Cause is established to Substitute, Terminate, and/or Reduce the Commitment in accordance with Section 5 of this special provision.

1. **Counting.** In order for work performed by a DBE to count as Eligible Participation, the following criteria must be met:
2. *DBE Certified to Perform the Work.* The DBE must be certified by the Colorado UCP in the work to be performed. DBEs are certified in particular areas of work which are designated by a Work Code.  Each DBE’s work codes can be found in its profile on the Colorado UCP DBE Directory.

The DBE must be certified to perform the work, and not under suspension, upon submission of the Commitment and upon execution of the DBE’s subcontract. When a Commitment has been made, but upon review of the CDOT Form 205, *Sublet Permit Application*, or CDOT Form 1425, *Supplier Application Approval Request*, the DBE is no longer certified in the Work Code which covers the work to be performed, the Contractor may not use the DBE’s participation as Eligible Participation. The Contractor shall Terminate the DBE Commitment and seek Substitution(s) in accordance with subsection 5(d) of this special provision. However, a DBE’s work will continue to count as Eligible Participation if the DBE was certified upon approval of the CDOT Form 205 or CDOT Form 1425 but the certification status changes during the performance of the work. Suppliers must be certified upon execution of the purchase order.

1. *Work Included in Commitment and/or Verified via Form 205 or Form 1425.* The work performed by the DBE must be reasonably construed to be included in the work area and Work Code identified by the Contractor in an approved Commitment or verified via Form 205, *Sublet Permit Application*, or Form 1425, *Supplier Application Approval Request*. The work identified on a Form 1425 shall not count against the Contractor’s 30 percent as required under *CDOT Standard Special Provisions for Road and Bridge Construction* subsection 108.01.

If the Contractor intends to use a DBE for work in order to fulfill an existing Commitment to that DBE but the work was not listed in the original Commitment (Form 1415), the Contractor shall submit a request for modification in accordance with Section 5 of this special provision to include the new area of work to be performed.  Unapproved work may count as Eligible Participation on the Contract but may not be used towards the fulfillment of the original Commitment to the DBE. A DBE Commitment cannot be modified to include work for which the DBE was not certified at the time of the approval of the original Commitment unless such work is in addition to the original Commitment.

CDOT Form 205, *Sublet Permit Application,* will be reviewed to determine whether the work being sublet is consistent with the Contractor’s Commitments. Approval of the sublet request may be withheld if the Contractor has Reduced, Terminated, or otherwise modified the type or amount of work to be performed by a DBE without seeking prior approval.

1. *Work Performed by DBE.* The work must be actually performed by the DBE with its own forces. For purposes of this specification, work performed by the DBE with its own forces includes work by temporary employees, provided such employees are under the control of the DBE; the cost of supplies and materials obtained by the DBE for its work on the Contract, provided that such supplies are not purchased or leased from the Contractor or a subcontractor that is subletting to the DBE; the cost of any equipment leased by the DBE, provided that such equipment is not leased from the Contractor or a subcontractor that is subletting to the DBE.

When a DBE subcontracts part of the work, the value of the subcontracted work shall be counted as Eligible Participation only if the subcontractor is a DBE and meets the criteria of this special provision. Performance of subcontracted work by non-DBE subcontractors, including non-DBE trucking firms and owner-operators, is not Eligible Participation and may not be used towards the fulfillment of a Commitment, the Substitution requirements under Section 5(d) of this special provision, and/or additional Eligible Participation under Section 6 of this special provision.

1. *Payment Received for Work*. The DBE must receive payment, including the release of its retainage, in order for the work to count as Eligible Participation.
2. *Special Calculations for Suppliers.* When a DBE supplies goods or materials for a project, the DBE may be classified as a manufacturer, dealer or broker.  The DBE’s status as a manufacturer, dealer or broker is determined on a contract-by-contract basis, based upon the actual work performed, in accordance with 49 CFR Part 26.55(e). When a DBE is deemed to be acting as a manufacturer, 100 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a regular dealer (i.e. non-manufacturer supplier), only 60 percent of the cost of the materials and/or supplies will count as Eligible Participation. When a DBE is deemed to be acting as a broker, only the reasonable brokerage fee will count as Eligible Participation.
3. *Service Fees.* For a DBE firm providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, the fees and commissions charged by the DBE shall count as Eligible Participation, provided the fees are not excessive as compared with fees customarily allowed for similar services. In the case of DBE temporary employment placement agencies, only the placement fee for a temporary employee that will be specifically and exclusively used for work on the contract shall count as Eligible Participation; the hourly fee does not count as Eligible Participation unless the firm is also certified in the work to be performed.
4. *Joint Venture Calculation.* When a DBE is a participant in a joint venture, the DBE must submit CDOT Form 893, *Information for Determining DBE Participation when a Joint Venture Includes a DBE*, to determine how much of the work performed by the joint venture may be considered Eligible Participation. To ensure sufficient time for review, Form 893 shall be submitted to CDOT no less than ten days before the submission of the bid or, if requested during the Contract, the point at which the DBE will begin work.
5. *Commercially Useful Function.* Upon a determination that a DBE has not performed a Commercially Useful Function (CUF) on the project, no participation by such DBE is Eligible Participation. DBE performance on the Contract will be monitored to ensure each DBE is performing a CUF. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions as described in Section 9 of this special provision.

The amount of work subcontracted, industry practices, the amount the firm is to be paid compared to the work performed and eligible participation claimed, and any other relevant factors will be considered in evaluating whether a DBE is performing a CUF. With respect to material and supplies used on the Contract, the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself in order to perform a CUF.

With respect to trucking, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Contract in order to perform a CUF.  Additionally, the DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract. Work by a DBE trucking firm will count as Eligible Participation only if the work was performed (i) with trucks owned and insured by the DBE trucking firm and those trucks were operated by drivers employed by the DBE trucking firm or (ii) with trucks leased by the DBE trucking firm from another DBE firm including owner operators who are certified DBEs. The DBE who leases trucks from another DBE receives credit for the transportation services the lessee DBE provides on the contract.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. Similar transactions involving non-DBEs will be evaluated in order to determine whether a DBE is an extra participant. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE is not performing a CUF.  The DBE may present evidence to rebut this presumption.

Commercially Useful Function will be evaluated using CDOT Form 1432, *Commercially Useful Function Questionnaire* and in accordance with Section 8(a) below.

1. *Joint Checks.* All Joint Checks must be approved before they are used in payment to a DBE. Joint Checks used in payments to DBEs will be monitored closely to ensure (1) the DBE is performing a CUF, and (2) the Joint Checks are not being used in a discriminatory manner.  The Contractor shall request approval for the use of a Joint Check in a written letter signed by the DBE and the Contractor, stating the reason for the Joint Checks and the approximate number of checks that will be needed. Failure to receive approval of a Joint Check may result in not counting such payment as Eligible Participation.
2. **Contract Finalization**

1. *Form 1432, Commercially Useful Function Questionnaire.* In order to have work performed and/or supplies provided by a DBE on the Contract count as Eligible Participation, the Contractor must submit a Form 1432, *Commercially Useful Function Questionnaire,* for that DBE. The Form 1432 must be signed by the DBE, Contractor and Project Engineer. Work performed and/or supplies provided on the Contract by a DBE Commitment will not count as Eligible Participation without a corresponding Form 1432 and the Contractor may be subject to a payment reduction as described in subsection 8(b) of this special provision.
2. *Payment Reduction.* The Contractor’s retainage will not be released until a determination is made as to whether the Contractor will be subject to a payment reduction. The Contractor will be subject to a payment reduction for any unapproved Termination, Reduction, and/or Substitution. Additionally, the Contractor will be subject to a payment reduction for any portion of a Commitment that was not fulfilled. The Contractor will not be subject to duplicate payment reductions for the same offense. Payment reductions may be reduced if the Contractor demonstrates that its failure to fulfill a Commitment or otherwise meet its obligations under this special provision was due to circumstances outside of its control.
3. **Other Enforcement**. As necessary, participants may be reviewed or investigated. All participants, including, but not limited to, DBE firms and applicants for DBE certification, complainants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.

Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program. Failure to comply with this paragraph shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Upon a determination that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other impermissible business arrangement, or if the Contractor engages in repeated violations, falsification or misrepresentation, any fraudulent or misrepresented DBE participation shall not count as Eligible Participation, progress payments may be withheld from the Contractor commensurate with the violation, the Contractor’s prequalification status may be suspended, the matter may be referred to the Office of Inspector General of the U.S. Department of Transportation for investigation and/or any other available contractual remedy may be sought.