

# CDOT Civil Rights Subletting and Suppliers Compliance Resource Guide

## Contractor Roles & CDOT Requirements at a Glance

	Form 205	Form 1425 <i>if over \$10k</i>	FHWA Form 1273	EEO Reporting <i>if over \$10k</i>	FHWA Form 1391 <i>if over \$10k</i>	B2GNow Account Creation	Input into B2GNow	Prompt Payment	Input into LCPTracker	Certified Payroll
 Subcontractor	✓	✗	✓	✓	✓	✓	✓	✓	✓	●
 On-Site Trucking/Hauling	✓	✗	✓	✓	✓	✓	✓	✓	✓	●
 Supplier	✗	✓	✓	✗	✗	●	●	✓	✗	●
 Off-Site Trucking/Hauling	✗	✓	✓	✗	✗	●	●	✓	✗	●
 Off-Site Trucking/Hauling but Performing Construction On-Site	✓	✗	✓	✓	✓	✓	✓	✓	✓	●

✓	= Required
✗	= Not Required
●	= Depends

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## Introduction

Subletting refers to the process by which CDOT authorizes the execution of a subcontract on a construction project. The requirement is documented in CDOT specification 108.01 and states that prime contractors must request permission from the CDOT Project Engineer to sublet a portion of the contract (between CDOT and the prime) to a subcontractor. This request is made by completing and submitting the Form 205. Prime contractors and subcontractors are also required to identify and submit to the CDOT Project Engineer each supplier providing \$10,000 or more of supplies or materials for the project. This notification is made by completing and submitting the Form 1425.

After learning of inconsistencies statewide regarding how the forms were being applied and the flow-down impact regarding related civil rights compliance requirements, CDOT recognized the need to formally work with stakeholders to better define the various entities working on CDOT construction projects and to identify the appropriate requirements and associated resources to support successful compliance.

The following guidance is the result of those efforts, and it is designed to answer questions about how to notify CDOT of the decision to sublet a portion of the contract or incorporate materials and supplies into the project. It also addresses the many questions and careful details surrounding civil rights compliance to better align compliance requirements with the realities of construction project delivery and Department of Labor expectations.

## Subletting to a Subcontractor

### 1. What is a Contractor?

CDOT Specification 101.22 provides the following definition for the term Contractor: *The individual, firm, or corporation contracting with the State of Colorado through the Department of Transportation for performance of prescribed work.*

### 2. What is a Subcontractor?

CDOT Specification 101.81 provides the following definition for the term Subcontractor: *An individual, firm, corporation, or other legal entity to whom the Contractor sublets part of the Contract. A subcontractor shall include an individual, firm, or corporation who meets one or both of the following criteria:*

- a. Establishes a fabricating process or facility exclusively for the use of the Project, whether on or off the site of work per 29 CFR 5.2(l)(1) and 29 CFR 5.2(l)(2).*
- b. Performs work that is incorporated within the Project limits.*

### 3. Is the Contractor permitted to sublet a portion of the contract?

Per CDOT Specification 108.01, the Contractor will be permitted to sublet a portion of the Contract; however, the Contractor's organization shall perform work amounting to 30 percent or more of the total original contract amount. Any items designated in the Contract as "specialty items" may be performed by subcontract. The cost of "specialty items" performed by subcontract may be deducted from the total original contract amount before computing the amount of work required to be performed by the Contractor's own organization. The original contract amount includes the cost of material and manufactured products which are to be purchased or produced by the Contractor and the actual agreement amounts between the Contractor and a subcontractor. Proportional value of a subcontracted partial contract item will be verified by the Engineer.

### 4. Does the Contractor need approval from CDOT to sublet?

Per CDOT Specification 108.01, the Contractor shall not sublet, sell, transfer, assign, or dispose of the Contract or Contracts, or any portion thereof without written permission of the Engineer.

**5. How does the Contractor request approval from CDOT to sublet?**

Prior to beginning any work by the subcontractor, the Contractor shall request permission from the Engineer by submitting a completed Sublet Permit Application, CDOT Form No. 205, via the B2GNow software system. The subcontract work shall not begin until the Contractor has received the Engineer's written permission via the B2GNow system. The Contractor shall make all project related written subcontracts, agreements, and purchase orders available to the Engineer for viewing, upon request, and at a location convenient to the Engineer.

**6. What happens if a subcontractor begins work prior to being approved via a Form 205?**

Any work done by that subcontractor prior to the approval date is considered unauthorized work, per Subsection 105.17 and the Project Engineer has the authority to have the work removed and replaced or to not pay for it. As soon as the subcontractor is discovered working on the project without authorization, a Form 105 (Speed Memo) should be issued immediately by the PE, informing the Prime Contractor of the situation.

**7. Are Subcontractors required to create an account in the B2GNow compliance software?**

All firms to which the Contractor will be subletting a portion of the Contract must have an account created in the B2GNow software system. If the firm does not have an account created, approval of the Form 205 (or Form 1425 for Suppliers) may be withheld.

**8. Are Subcontractors required to submit certified payrolls?**

Yes, Contractor and subcontractor employees, including truck drivers, are covered by DBRA prevailing wages in the following instances (They must be paid at least prevailing wages and must submit and be included on a payroll):

- The employees and truck drivers are working on the "site of the work."
  - Truck drivers hauling from one location on the project to another location on the project are working on the "site of the work" and are covered under DBRA.
- Employees working at a facility and truck drivers hauling to or from a facility that is deemed part of the "site of the work" are covered under DBRA.

- For example, truck drivers hauling between the job site and a batch plant or staging area dedicated exclusively or nearly so, to the project, and whose location is adjacent or virtually adjacent to the project are covered under DBRA.
- For example, truck drivers hauling material from a materials pit or hot mix plant to the project provided the materials pit or hot mix plant is dedicated exclusively, or nearly so, to the project, and provided it is located adjacent or virtually adjacent to the project are covered under DBRA.

Additionally, for drivers that work (either as employees or through a written agreement) for a construction contractor (or subcontractor) performing construction onsite the following additional guidance applies. Under current DOL guidance as stated in the Field Operations Handbook at 15e22, drivers who work for the construction contractor are covered when loading or unloading materials onsite for delivery or removal if such time is not de minimis, such as just a few minutes spent at a time to pick up or drop something off. Waiting in queue on the site of work to drop off materials from a location that is not on the site of work does not contribute to the few minutes. There is no 20% requirement or cutoff for determining that work is or is not de minimis for truck drivers who work for contractors. In the Field Operations Handbook, the 20% is only mentioned with reference to drivers who work for material supply companies.

[Return to Independent Truck Drivers Section](#)

**9. Can a Subcontractor also be a Supplier on a single project?**

Yes, per CDOT Specification 108.01: When a firm both sells material to a prime contractor and performs the work of incorporating the materials into the project, these two phases shall be considered in combination and as constituting a single subcontract. The Subcontractor shall acknowledge on the Form 205 that they are operating both in the capacity of a Subcontractor and Supplier for a project.

**10. If a firm is providing a professional service off the site of work, is that firm considered a Subcontractor or Supplier?**

Professional services firms performing work off the site of work would be considered a Subcontractor and are required to submit a Form 205. Persons employed in a bona fide executive, administrative and professional capacity are not covered under the Davis-Bacon Act per 29 CFR 5.2(m). Some examples of these types of firms are third

party material testing services, public information services, architectural services, engineering services, etc.

**11. Is a brokerage firm a Subcontractor or Supplier?**

If a brokerage firm is contracted to only provide brokerage services, that firm is considered a Subcontractor and would adhere to the Subcontractor requirements. That firm would determine if lower tier firms (to include individual truck drivers) meet the Subcontractor or Supplier definition and would submit the appropriate Form 205 or Form 1425 in accordance with CDOT specifications. If the brokerage firm is providing brokerage services and is also providing supplies, a Form 205 is required (due to the brokerage services being provided as described above). The firm would indicate on the Form 205 that it is also operating as a supplier for the project.

**12. If a wage decision contains a classification on it, do all employees (including truck drivers) for Suppliers and Subcontractors have to submit certified payrolls uniformly?**

No, it is vital to evaluate if the firm is categorized as a Supplier or Subcontractor to determine certified payroll requirements even if the wage decision contains a classification that may be used for both Suppliers and Subcontractors. For example, a wage determination may contain a classification for water truck. If the firm is a bona fide material supplier “serving the public in general”, and the firm is contracted to deliver non-potable water to the site of work from a location that is not considered to be part of the site of work, then that firm would be categorized as a Supplier and would adhere to the Supplier requirements. If that firm is performing actual construction, it would be categorized as a Subcontractor and would adhere to the Subcontractor requirements.

**13. When a firm is acting as a Subcontractor and a Supplier on a single project, are certified payrolls required for all employees?**

No. When evaluating whether certified payrolls are required, the primary employer will evaluate what functions the employee is doing on the site of work. If the employee is performing active construction as part of the subcontracted work, the employee will be subject to the Subcontractor certified payroll guidance above. Take special note of how this is applied for drivers:

- For drivers that work (either as employees or through a written agreement) for a construction contractor (or subcontractor) performing construction onsite, the following additional guidance applies. Under current DOL guidance

as stated in the Field Operations Handbook at 15e22, drivers who work for the construction contractor are covered when loading or unloading materials onsite for delivery or removal if such time is not de minimis, such as just a few minutes spent at a time to pick up or drop something off. Waiting in queue on the site of work to drop off materials from a location that is not on the site of work does not contribute to the few minutes. There is no 20% requirement or cutoff for determining that work is or is not de minimis for truck drivers who work for contractors. In the Field Operations Handbook, the 20% is only mentioned with reference to drivers who work for material supply companies.

If the employee is operating in the capacity of fabricating or processing an item off the site of work or is delivering an item(s) to the site of work, they are acting as a supplier and will be subject to the Supplier certified payroll guidance in the Supplier section below.

Take special note of how this is applied for drivers:

- For drivers that work (either as employees or contractors) for a bona fide material supply company the following additional guidance applies. If the driver is making deliveries of materials to the site of work, that time is not covered for DBRA purposes. However, if the worker of a material supply company (including a driver) performs actual construction work (such as warranty or repair work) for more than an incidental amount of time (20% of a work week), and that construction work is related to an item that has been delivered to the site of work, then that time spent performing actual construction work (on site) would be covered by DBRA. Moreover, if a worker for a material supply company spends more than 20% of their workweek performing actual construction work on the site of work, at that point all time that the worker spends on the site of work, including delivery time, will be considered to be covered. The material supply company should be tracking any time that a material supply company worker spends on the site of work doing actual construction to make sure that the worker is paid the applicable prevailing wage for that work. If the material supply worker spends more than 20% of their work week performing actual construction work, the contractor would then also need to track delivery time spent on site as at that point they are considered to essentially be a construction worker and all of their onsite time would be covered.



## Use of Suppliers (Control of Material)

### 1. What is a Supplier?

CDOT Specification 101.81.5 provides the following definition for the term Supplier:  
*An individual, firm, or corporation who meets one or both of the following criteria:*

- a. Fabricates or processes a material not on the site of work per 29 CFR 5.2(l)(3).*
- b. Delivers material directly to the project.*

*In both cases, the material shall be intended for permanent incorporation into the worksite.*

### 2. Is the Contractor permitted to utilize Suppliers on the contract?

Per CDOT Specification 106.01, the Contractor shall submit a completed Form 1425 for each direct supplier that meets the \$10,000 criteria outlined within the specification via the B2GNow software system. The Form 1425 shall be submitted to the Engineer prior to beginning any work on the project or incorporating materials into the project, or at such time that the \$10,000 amount is known to be exceeded. If an individual, firm, or corporation is responsible for installation of supplies, a Form 205 shall be required for the subcontractor. The supplier shall notify the Contractor if an individual spends more than 20% of their workweek performing actual construction work such as installation, repair, or warranty work on the site of work as that would require the submission of a Form 205 and certified payrolls. The 20% parameter will be evaluated by each individual CDOT project separately. During the performance of the project, the Contractor shall submit an updated Form 1425 if information changes.

### 3. Is the supplier status governed by the type of material that is being carried?

No. The type of material does not govern the status of a driver as either a supplier or a subcontractor. It is the actual work performed that governs the applicability provisions for the contractor.

#### **4. How does the Contractor request acceptance from CDOT to utilize Suppliers?**

Per CDOT Specification 106.01, the Contractor shall submit a completed Form 1425 for each direct supplier that provides one or more of the following elements in which the cost exceeds \$10,000.

- a. Fabrication of materials
- b. Processing of materials
- c. Delivery service cost of the material delivered to the project

The Form 1425 shall be submitted to the Engineer prior to beginning any work on the project, incorporating materials into the project, or at such time that the \$10,000 amount is known to be exceeded.

Each subcontractor or supplier at any tier meeting the \$10,000 requirement above shall submit a Form 1425 to the Contractor, who will then submit it to the Department. The Contractor shall submit the subcontractor's Form(s) 1425 with Form 205 (if any) to the Engineer prior to the subcontractor/supplier beginning any work on the project, incorporating materials into the project, or at such time the \$10,000 amount is known to be exceeded.

#### **5. Are Suppliers required to create an account in the B2GNow compliance software?**

All suppliers who provide one or more of the following elements in which the cost exceeds \$10,000 shall create an account in the B2GNow software system.

- a. Fabrication of materials
- b. Processing of materials
- c. Delivery service cost of the material delivered to the project

If the supplier does not have an account created, approval of the Form 1425 may be withheld.

#### **6. Are Suppliers required to submit certified payrolls?**

Supplier employees, including truck drivers, are not covered by DBRA prevailing wages in the following instances (the prevailing wage requirements do not apply to these employees and are not included on a payroll):

- Employees working at and truck drivers hauling to the project from a facility not deemed part of the “site of the work” are not covered under DBRA prevailing wage requirements. The facility is not considered to be part of the “site of the work” if it does not meet the criteria of dedicated and/or adjacent to the project.
  - For example: If truck drivers are hauling material to the project from a facility that is not adjacent or virtually adjacent to the project, they are not covered under DBRA.
  - For example: Truck drivers hauling materials to the project from a commercial source are not covered under DBRA. The commercial source is not a facility that is dedicated exclusively, or nearly so, to the project; Therefore, DBRA does not apply.
  - Trucking owner-operators are not covered under DBRA.

Additionally, for drivers that work (either as employees or contractors) for a bona fide material supply company the following additional guidance applies. If the driver is making deliveries of materials to the site of work, that time is not covered for DBRA purposes. However, if the worker of a material supply company (including a driver) performs actual construction work (such as warranty or repair work) for more than an incidental amount of time (20% of a work week), and that construction work is related to an item that has been delivered to the site of work, then that time spent performing actual construction work (on site) would be covered by DBRA. Moreover, if a worker for a material supply company spends more than 20% of their workweek performing actual construction work on the site of work, at that point all time that the worker spends on the site of work, including delivery time, will be considered to be covered. The material supply company should be tracking any time that a material supply company worker spends on the site of work doing actual construction to make sure that the worker is paid the applicable prevailing wage for that work. If the material supply worker spends more than 20% of their work week performing actual construction work, the contractor would then also need to track delivery time spent on site as at that point they are considered to essentially be a construction worker and all of their onsite time would be covered.

## Independent Truck Drivers

### 1. Is a trucking firm (or independent hired driver) a Subcontractor or Supplier?

Each circumstance is unique and each trucking firm (or independent hired driver) must evaluate the definitions above for Subcontractor and Supplier to determine which definition best describes the trucking firm's (or independent hired driver's) role on the project. A factor to consider is if the trucking firm (or independent hired driver) is responsible for On-Site Trucking/Hauling or Off-Site Trucking/Hauling.

- a. On-Site Trucking/Hauling: Working or hauling within project limits.
  - i. That trucking firm (or independent hired driver) would adhere to the Subcontractor requirements.
- b. Off-Site Trucking/Hauling: Hauling to or from project limits to complete deliveries. These firms are on-site as part of delivering materials, but are not engaging in active construction (installation, repair and warranty work, etc.) while on-site.
  - i. This trucking firm (or independent driver) would adhere to the Supplier requirements.
- c. Off-Site Trucking/Hauling, but performs active construction on-site: During Off-Site trucking/hauling, if a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a subcontractor (including installation, repair or warranty work, etc.), its laborers and mechanics employed at the site of the work for more than 20% of a workweek would be subject to DBRA in the same manner as those employed by any other contractor or subcontractor.
  - i. That trucking firm (or independent hired driver) would adhere to the Subcontractor requirements.

### 2. What is required for an independent truck driver to be utilized on a CDOT project?

Every truck driver or leased driver that is engaged in *On-Site* Trucking/Hauling shall submit a Form 205. This means the truck driver will be working or hauling within the project limits. If that criteria is met, the truck driver is determined to be acting as a Subcontractor and shall adhere to the requirements set forth for Subcontractors.

Every truck driver or leased driver that is engaged in *Off-Site* Trucking/Hauling shall submit a Form 1425 (\$10,000 threshold). This means the truck driver is hauling to or from project limits to complete deliveries. These firms are on-site as part of delivering materials, but are not engaging in active construction (installation, repair and warranty work, etc.) while on-site. If this criteria is met, the truck driver is determined to be acting as a Supplier and shall adhere to the requirements set forth for Suppliers.

- During Off-Site Trucking/Hauling, if a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a subcontractor (including installation, repair or warranty work, etc.) then a Form 205 is required and the firm shall adhere to the requirements set forth for Subcontractors. This includes that the firm's laborers and mechanics employed at the site of the work for more than 20% of a workweek would be subject to DBRA in the same manner as those employed by any other contractor or subcontractor.

The Form 205 or Form 1425 is required for firms at every tier. Trucking firms need only one Form 205 or Form 1425 per subcontract/agreement regardless of how many employees the trucking firm has. A trucking firm that is subcontracted to haul for two different companies will need two different forms.

### **3. How does certified payroll apply to trucking?**

On-Site Trucking/Hauling firms fall under the definition of laborers and mechanics in the Davis Bacon Act and the Davis Bacon Related Acts. These acts dictate the wages that covered firms must pay their employees when certified payrolls are required. Employees to which these payment rules apply are considered covered by the law. CDOT monitors payroll to these covered employees through LCPtracker.

### **4. Do all truck drivers need to submit certified payroll?**

No, truck drivers shall comply with the Subcontractor or Supplier certified payroll requirements above depending on the role the truck driver has on the project. This requirement is unique for owner-operators and additional detail is provided below.

### **5. How are these requirements different for owner/operators?**

This information applies to truck owners who own AND drive their own truck. The [US DOL's enforcement position](#) is that the owner/operator status applies only when the owners own AND drive their own truck. This owner/operator position does not apply to any other employee working for the owner, nor does it apply to any other equipment owner/operator.

**6. Are certified payrolls required for owner/operators of trucks?**

<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/Tab9.pdf>

For owner/operator truck drivers that are de minimis, certified payrolls are not required. For those owner/operators that are hauling on-site performing a part of construction and/or are on the project more than de minimis (more than 20% of the workweek), certified payrolls must be completed. The certified payrolls must include the names of the owner/operator, and the owner/operator will need to click a button that says “owner/ operator” within LCPtracker. Owner/operators will not need to show the hours worked nor the rate paid. Registration and driver’s license must be uploaded into e-documents within LCPtracker. For those owner/operators that are sometimes de minimis and sometimes not, owner/operators must claim a no workweek, with a “working de minimis time,” notation for each week that it is applicable. Truck drivers who are independent owner/operators cannot be listed on the prime contractor’s certified payroll. Either the truck drivers are independent owner/operators, or they are employees. They are not both.

**7. What is needed for back-up documentation for truck driver certified payrolls within LCPtracker?**

All independent truck drivers that are subject to certified payroll need to submit a copy of their license and registration through the e-Documents tab into the LCPtracker system. Owner/operators must also submit an owner-operator affidavit into LCPtracker. All independent truck drivers must also fill out a Contractor Fringe Benefit and Deduction Statement that they must upload into LCPtracker as well. If they are owner/operators, they have an exemption from DOL in which they do not need to describe the benefits that they are receiving; however, an owner or business must describe any benefits and/or cash fringe for their employees, regardless of the relationship between the owner/operator and the employee. Supporting documentation for certified payroll would have to be uploaded into LCPtracker for any employee(s) that they have as per the following guidance (Owner-operators would need the supporting documents in LCPtracker):

[https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo\\_june-2018.pdf](https://www.codot.gov/business/civilrights/compliance/assets/cdot-certified-payroll-memo_june-2018.pdf)

**8. How do these rules apply to my covered 1099 employees?**

Firms must report certified payroll information for all of their employees. A 1099 driver is never considered an employee. Either those individuals are employees, or they are independent contractors. If they are not W-2 employees, then those 1099 drivers are considered subcontractors or suppliers (and that relationship must be documented accordingly through the parameters of the Form 205 or Form 1425) and are responsible for submitting their own certified payroll information.

**9. How does DBE counting work for trucking firms, including those using 1099 drivers?**

DBE trucking firms receive credit for the total value services provided by trucks that the DBE owns, insures, and operates with either its W-2 employees or 1099 drivers. If a DBE firm's employee drives a truck that is not owned by the DBE, then they cannot get DBE credit. No credit is granted for services provided by leased or subcontracted trucks including those driven by the DBE firm's W-2 employee.

## Contractor Type Reference Tables

Contractor Type	Subcontractor
Definition	<p>An individual, firm, corporation, or other legal entity to whom the Contractor sublets part of the Contract. A subcontractor shall include an individual, firm, or corporation who meets one or both of the following criteria:</p> <ol style="list-style-type: none"> <li>Establishes a fabricating process or facility exclusively for the use of the Project, whether on or off the site of work per 29 CFR 5.2(l)(1) and 29 CFR 5.2(l)(2).</li> <li>Performs work that is incorporated within the Project limits.</li> </ol>
Required Form on CDOT Project	CDOT Form 205 (CDOT Specification 108.01)
FHWA 1273	Yes, required to be attached
EEO Reporting (required if contract/agreement exceeds \$10,000)	Yes (CDOT Specification: Affirmative Action Requirements, Equal Employment Opportunity)
FHWA 1391	Yes (if subcontract/agreement exceeds \$10,000)
B2GNow Account Creation	Yes (CDOT Specification 108.01)
Input into B2GNow	Yes (CDOT Specification 109.06 (h))
Prompt Payment Required	Yes (CDOT Specification 109.06 (e))
Potential Impact to DBE Counting/ Program	Depends on service provided; generally counts as 100% DBE participation if the Subcontractor performs work for which it is certified.
Input into LCPtracker	Yes (CDOT Specification: Certified Payroll Requirements for Construction Contracts)



<p>Certified Payroll Requirements</p>	<p><b>Covered Applications</b> - Contractor and subcontractor employees including truck drivers are always covered by DBRA prevailing wages in the following instances (They must be paid at least prevailing wages and must submit and be included on a payroll):</p> <ul style="list-style-type: none"> <li>a. The employees and truck drivers are working on the “site of the work.” <ul style="list-style-type: none"> <li>i. Truck drivers hauling from one location on the project to another location on the project are working on the “site of the work” and are covered under DBRA.</li> </ul> </li> <li>b. Employees working at a facility and truck drivers hauling to or from a facility that is deemed part of the “site of the work” are covered under DBRA. <ul style="list-style-type: none"> <li>i. Truck drivers hauling between the job site and a batch plant or staging area dedicated exclusively or nearly so, to the project, and whose location is adjacent or virtually adjacent to the project are covered under DBRA.</li> <li>ii. Truck drivers hauling material from a materials pit or hot mix plant to the project provided the materials pit or hot mix plant is dedicated exclusively, or nearly so, to the project, and provided it is located adjacent or virtually adjacent to the project are covered under DBRA.</li> </ul> </li> </ul> <p><b>Additional Note:</b>  For drivers that work (either as employees or through a written agreement) for a construction contractor (or subcontractor) performing construction onsite the following additional guidance applies. Under current DOL guidance as stated in the Field Operations Handbook at 15e22, drivers who work for the construction contractor are covered when loading or unloading materials onsite for delivery or removal if such time is not de minimis, such as just a few minutes spent at a time to pick up or drop something off. Waiting in queue on the site of work to drop off materials from a location that is not on the site of work does not contribute to the few minutes. There is no 20% requirement or cutoff for determining that work is or is not de minimis for truck drivers who work for contractors. In the Field Operations Handbook, the 20% is only mentioned with reference to drivers who work for material supply companies.</p>
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*Subcontractor*

Contractor Type	Supplier
Definition	<p>An individual, firm, or corporation who meets one or both of the following criteria:</p> <ul style="list-style-type: none"> <li>a. Fabricates or processes a material not on the site of work per 29 CFR 5.2(l)(3).</li> <li>b. Delivers material directly to the project.</li> </ul> <p>In both cases, the material shall be intended for permanent incorporation into the worksite.</p>
Required Form for CDOT Project	CDOT Form 1425, \$10,000 threshold (CDOT Specification 106.01)
FHWA 1273	Yes, required to be referenced
EEO Reporting (required if contract/agreement exceeds \$10,000)	No (CDOT Specification: Affirmative Action Requirements, Equal Employment Opportunity)
FHWA 1391	Not required
B2GNow Account Creation	Yes, \$10,000 threshold (CDOT Specification 106.01)
Input into B2GNow	Yes, \$10,000 threshold (CDOT Specification 109.06 (h))
Prompt Payment Required	Yes (CDOT Specification 109.06 (e))
Potential Impact to DBE Counting/ Program	<p>Only count work performed by the DBE towards the goal if the supplier is certified for that work. This definition accounts for a manufacturer which would count for 100% participation. It does not account for regular dealers and brokers who will only count for a portion of the firm's participation (60% for regular dealers and only commission fees for brokers). Regular dealers provide supplies to a project but do not manufacture and/or produce goods. Brokers are third-party facilitators for a transaction involving goods.</p>
Input into LCPtracker	Generally no. If guidance below determines that certified payrolls are required, they will be input into the LCPtracker system.

Certified Payroll Requirements

**Non-Covered Applications** - Supplier employees including truck drivers are not covered by DBRA prevailing wages in the following instances (the prevailing wage requirements do not apply to these employees and are not included on a payroll):

a. Employees working at and truck drivers hauling to the project from a facility not deemed part of the “site of the work” are not covered under DBRA prevailing wage requirements. The facility is not considered to be part of the “site of the work” if it does not meet the criteria of dedicated and/or adjacent to the project.

i. For example: If truck drivers are hauling material to the project from a facility that is not adjacent or virtually adjacent to the project, they are not covered under DBRA.

ii. For example: Truck drivers hauling materials to the project from a commercial source are not covered under DBRA. The commercial source is not a facility that is dedicated exclusively, or nearly so, to the project therefore, DBRA does not apply.

iii. Trucking owner/operators are not covered under DBRA as defined below.

**Additional Note:**

For drivers that work (either as employees or contractors) for a bona fide material supply company the following additional guidance applies. If the driver is making deliveries of materials to the site of work, that time is not covered for DBRA purposes. However, if the worker of a material supply company (including a driver) performs actual construction work (such as warranty or repair work) for more than an incidental amount of time (20% of a work week), and that construction work is related to an item that has been delivered to the site of work, then that time spent performing actual construction work (on site) would be covered by DBRA. Moreover, if a worker for a material supply company spends more than 20% of their workweek performing actual construction work on the site of work, at that point all time that the worker spends on the site of work, including delivery time, will be considered to be covered. The material supply company should be tracking any time that a material supply company worker spends on the site of work doing actual construction to make sure that the worker is paid the applicable prevailing wage for that work. If the material supply worker spends more than 20% of their work week performing actual construction work, the contractor would then also need to track delivery time spent on site as at that point they are considered to essentially be a construction worker and all of their onsite time would be covered.

*Supplier*

Contractor Type	On-Site Trucking/Hauling
Definition	Working or Hauling within Project Limits
Required Form on CDOT Project	CDOT Form 205 (CDOT Specification 108.01)
FHWA 1273	Yes, required to be attached
EEO Reporting (required if contract/agreement exceeds \$10,000)	Yes (CDOT Specification: Affirmative Action Requirements, Equal Employment Opportunity)
FHWA 1391	Yes (if subcontract/agreement exceeds \$10,000)
B2GNow Account Creation	Yes (CDOT Specification 108.01)
Input into B2GNow	Yes (CDOT Specification 109.06 (h))
Prompt Payment Required	Yes (CDOT Specification 109.06 (e))
Potential Impact to DBE Counting/ Program	Count 100% DBE participation for any transportation services provided by trucks owned, insured, and operated by the DBE firm's employees.
Input into LCPtracker	Yes (CDOT Specification: Certified Payroll Requirements for Construction Contracts)
Certified Payroll Requirements	<p><b>Covered Applications</b> - Contractor and subcontractor employees including truck drivers are always covered by DBRA prevailing wages in the following instances (They must be paid at least prevailing wages and must submit and be included on a payroll):</p> <ul style="list-style-type: none"> <li>a. Employees and truck drivers are working on the “site of the work.” <ul style="list-style-type: none"> <li>i. Truck drivers hauling from one location on the project to another location on the project are working on the “site of the work” and are covered under DBRA.</li> </ul> </li> <li>b. Employees working at a facility and truck drivers hauling to or from a facility that is deemed part of the “site of the work” are covered under DBRA. <ul style="list-style-type: none"> <li>i. Truck drivers hauling between the job site and a batch plant or staging area dedicated exclusively or nearly so, to the project, and whose location is adjacent or virtually adjacent to the project are covered under DBRA.</li> <li>ii. Truck drivers hauling material from a materials pit or hot mix plant to the project provided the materials pit or hot mix plant is dedicated exclusively, or nearly so, to the project, and provided it’s located adjacent or virtually adjacent to the project are covered under DBRA.</li> </ul> </li> </ul>

	<p><b>Additional Note:</b>  For drivers that work (either as employees or through a written agreement) for a construction contractor (or subcontractor) performing construction onsite the following additional guidance applies. Under current DOL guidance as stated in the Field Operations Handbook at 15e22, drivers who work for the construction contractor are covered when loading or unloading materials onsite for delivery or removal if such time is not de minimis, such as just a few minutes spent at a time to pick up or drop something off. Waiting in queue on the site of work to drop off materials from a location that is not on the site of work does not contribute to the few minutes. There is no 20% requirement or cutoff for determining that work is or is not de minimis for truck drivers who work for contractors. In the Field Operations Handbook, the 20% is only mentioned with reference to drivers who work for material supply companies.</p>
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*On-Site Trucking/Hauling*

Contractor Type	Off-Site Trucking/Hauling
Definition	Hauling to or from project limits to complete deliveries. These firms are on-site as part of delivering materials, but are not engaging in active construction (installation, repair and warranty work, etc.) while on-site
Required Form on CDOT Project	CDOT Form 1425, \$10,000 threshold (CDOT Specification 106.01)
FHWA 1273	Yes, required to be referenced
EEO Reporting (required if contract/agreement exceeds \$10,000)	No (CDOT Specification: Affirmative Action Requirements, Equal Employment Opportunity)
FHWA 1391	No
B2GNow Account Creation	Yes, \$10,000 threshold (CDOT Specification 106.01)
Input into B2GNow	Yes, \$10,000 threshold (CDOT Specification 109.06 (h))
Prompt Payment Required	Yes (CDOT Specification 109.06 (e))
Potential Impact to DBE Counting/ Program	Count 100% DBE participation for any transportation services provided by trucks owned, insured, and operated by the DBE firm's employees.
Input into LCPtracker	Generally no. If guidance below determines that certified payrolls are required, they will be input into the LCPtracker system.

Certified Payroll Requirements

**Non-Covered Applications** - Contractor and subcontractor employees including truck drivers are not covered by DBRA prevailing wages in the following instances (the prevailing wage requirements do not apply to these employees and are not included on a payroll):

a. Employees working at and truck drivers hauling to the project from a facility not deemed part of the “site of the work” are not covered under DBRA prevailing wage requirements. The facility is not considered to be part of the “site of the work” if it does not meet the criteria of dedicated and/or adjacent to the project.

i. For example: If truck drivers are hauling material to the project from a facility that is not adjacent or virtually adjacent to the project, they are not covered under DBRA.

ii. For example: Truck drivers hauling materials to the project from a commercial source are not covered under DBRA. The commercial source is not a facility that is dedicated exclusively, or nearly so, to the project therefore, DBRA does not apply.

iii. Trucking owner-operators are not covered under DBRA as defined below.

**Additional Note:**

For drivers that work (either as employees or contractors) for a bona fide material supply company the following additional guidance applies. If the driver is making deliveries of materials to the site of work, that time is not covered for DBRA purposes. However, if the worker of a material supply company (including a driver) performs actual construction work (such as warranty or repair work) for more than an incidental amount of time (20% of a work week), and that construction work is related to an item that has been delivered to the site of work, then that time spent performing actual construction work (on site) would be covered by DBRA. Moreover, if a worker for a material supply company spends more than 20% of their workweek performing actual construction work on the site of work, at that point all time that the worker spends on the site of work, including delivery time, will be considered to be covered. The material supply company should be tracking any time that a material supply company worker spends on the site of work doing actual construction to make sure that the worker is paid the applicable prevailing wage for that work. If the material supply worker spends more than 20% of their work week performing actual construction work, the contractor would then also need to track delivery time spent on site as at that point they are considered to essentially be a construction worker and all of their onsite time would be covered.

Contractor Type	Off-Site Trucking/Hauling, but performs active Construction on-site
Definition	During Off-Site trucking/hauling, if a material supplier, manufacturer, or carrier undertakes to perform a part of a construction contract as a subcontractor (including installation, repair or warranty work, etc.), its laborers and mechanics employed at the site of the work for more than 20% of a workweek would be subject to DBRA in the same manner as those employed by any other contractor or subcontractor.
Required Form on CDOT Project	CDOT Form 205 (CDOT Specification 106.01 and 108.01)
FHWA 1273	Yes, required to be attached
EEO Reporting (required if contract/agreement exceeds \$10,000)	Yes (CDOT Specification: Affirmative Action Requirements, Equal Employment Opportunity)
FHWA 1391	Yes (if subcontract/agreement exceeds \$10,000)
B2GNow Account Creation	Yes (CDOT Specification 108.01)
Input into B2GNow	Yes (CDOT Specification 109.06 (h))
Prompt Payment Required	Yes (CDOT Specification 109.06 (e))
Potential Impact to DBE Counting/ Program	Count 100% DBE participation for any transportation services provided by trucks owned, insured, and operated by the DBE firm's employees.
Input into LCPtracker	Yes (CDOT Specification: Certified Payroll Requirements for Construction Contracts)
Certified Payroll Requirements	<p><b>Additional Note:</b> Employees of a material supplier who are required to perform more than an incidental amount of construction work in any workweek at the site of work would be covered by the DBRA and due the applicable wage rate for the classification of work performed. This would include installation as well as warranty and/or repair work.</p> <p>For enforcement purposes, if such an employee spends more than 20 percent of his/her time in a workweek engaged in such activities on the site, he/she is DBRA covered for all time spent on the site during that workweek. (See <b>Covered Applications</b> notes outlined above in Subcontractor requirements.</p>

*Off-Site Trucking/Hauling, but performs active construction on-site*

**Other Contractor/Firm Types and Considerations:**

These will be categorized and adhere to requirements above as either On-Site or Off-Site Trucking/Hauling, depending on where the work/haul is being completed as outlined above. If On-Site, then On-Site requirements will be adhered to. If Off-Site, then Off-Site Requirements will be adhered to.

Contractor Type	Owner/Operators
Working Definition	Operators who own and drive their own truck. Owners of trucks that have incorporated and, (1) own at least 20% of the business, (2) participate in the management of the business and, (3) are not hiring drivers outside of the corporate owners are eligible for bona-fide truck owner-operator status.
Required Form on CDOT Project	See On-Site or Off-Site
FHWA 1273	See On-Site or Off-Site
EEO Reporting (required if contract/agreement exceeds \$10,000)	See On-Site or Off-Site
FHWA 1391	See On-Site or Off-Site
B2GNow Account Creation	See On-Site or Off-Site
Input into B2GNow	See On-Site or Off-Site
Prompt Payment Required	See On-Site or Off-Site
Potential Impact to DBE Counting/ Program	Count 100% DBE participation for any transportation services provided by trucks owned, insured, and operated by the DBE firm's employees.
Input into LCPtracker	See On-Site or Off-Site
Certified Payroll Requirements	<b>Additional Note:</b> Certified payrolls must include the names of such owner-operators, but do not need to show the hours worked or rates paid, only the notation “owner-operator.” This applies only to the owner-operator employed by the contractor and appearing on the contractor’s payroll. The legal test that is utilized to determine if the owner-operator is in fact an independent contractor stems from the right to control test. An owner-operator has the right to agree or disagree upon whether he or she chooses to work on a particular project.

*Owner/Operators*



Contractor Type	Commercial Source Material Supplier
Working Definition	The manufacture and delivery to the work site of supply items such as sand, aggregate, steel, asphaltic materials, bituminous pavement, ready-mix concrete, etc., when accomplished by a bona fide commercial source material supplier operating facilities serving the public in general, are activities not covered by Davis-Bacon.
Required Form on CDOT Project	See On-Site or Off-Site
FHWA 1273	See On-Site or Off-Site
EEO Reporting (required if contract/agreement exceeds \$10,000)	See On-Site or Off-Site
FHWA 1391	See On-Site or Off-Site
B2GNow Account Creation	See On-Site or Off-Site
Input into B2GNow	See On-Site or Off-Site
Prompt Payment Required	See On-Site or Off-Site
Potential Impact to DBE Counting/ Program	Count cost of delivery as part of DBE participation if the supplier is a DBE.
Input into LCPtracker	See On-Site or Off-Site
Certified Payroll Requirements	See <b>Covered Applications</b> or <b>Non-Covered Applications</b>

*Commercial Source Material Supplier*

Contractor Type	Material Production Sites (Pits, Batch Plants, Hot-Mix Plants, etc.)
Working Definition	If the material production site is adjacent and dedicated exclusively to the project then On-Site would apply. If both or either condition is not met, Off-Site would apply.
Required Form on CDOT Project	See On-Site or Off-Site
FHWA 1273	See On-Site or Off-Site
EEO Reporting (required if contract/agreement exceeds \$10,000)	See On-Site or Off-Site
FHWA 1391	See On-Site or Off-Site
B2GNow Account Creation	See On-Site or Off-Site
Input into B2GNow	See On-Site or Off-Site
Prompt Payment Required	See On-Site or Off-Site
Potential Impact to DBE Counting/ Program	Count cost of delivery as part of DBE participation if the supplier is a DBE.
Input into LCPtracker	See On-Site or Off-Site
Certified Payroll Requirements	<p>See <b>Covered Applications</b> or <b>Non-Covered Applications</b></p> <p><b>Additional Note:</b> If the site is dedicated to the construction project AND is adjacent or virtually adjacent to the project, DBRA prevailing wages apply to truck drivers hauling material from the site to the project and to laborers and mechanics working at the site.</p>

*Material Production Sites*

Contractor Type	Hired Driver(s)
Working Definition	This includes 1099 drivers and other people hired to drive. This excludes owner-operators.
Required Form on CDOT Project	See On-Site or Off-Site
FHWA 1273	See On-Site or Off-Site
EEO Reporting (requirements if contract/agreement exceeds \$10,000)	See On-Site or Off-Site
FHWA 1391	See On-Site or Off-Site
B2GNow Account Creation	See On-Site or Off-Site
Input into B2GNow	See On-Site or Off-Site
Prompt Payment Required	See On-Site or Off-Site
Potential Impact to DBE Counting/ Program	If the trucking firm that hired the driver (either as an employee or a 1099 contractor) is DBE certified and the driver operates the DBE firm's truck, count that participation as DBE participation.
Input into LCPtracker	See On-Site or Off-Site
Certified Payroll Requirements	See Covered or Non Covered Applications  <b>Additional Note:</b> Most often this will be categorized as Off-Site as the individual is hired to drive, not perform active Construction.

*Hired Drivers*