

Chapter 2: SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 1: CDOT's DBE Program

CDOT has submitted this program to FHWA for approval which shall count for all of CDOT's DOT-assisted programs, provided that CDOT's goals shall be reviewed by the particular OA that provides funding for its DOT-assisted contracts. CDOT will not submit regular updates of its DBE programs so long as it remains in compliance. However, CDOT will submit significant changes in the program for approval. CDOT will continue to carry out its program until all funds from USDOT financial assistance have been expended.

Subrecipients of FHWA funds from CDOT (i.e. local agencies) are subject to and must operate in accordance with CDOT's DBE Program for all FHWA funded contracts.

Subrecipients of FTA funds from CDOT are subject to and must operate in accordance with CDOT's DBE Program unless the grant partner is a direct recipient of FTA funds and has a current OA-approved DBE program and overall goal. While agreements are not required to be in writing, a template of CDOT's MOU for grant partners seeking to implement their own DBE program is provided as **Subpart G, Exhibit B**.

Ref: 49 CFR Part 26.21

Section 2: Policy Statement

CDOT has issued signed Policy Directive which complies with the requirements of 49 CFR 26.23. A copy of Policy Directive is found in **Subpart G, Exhibit C**.

Ref: 49 CFR Part 26.23

Section 3: DBE Liaison Officer

CDOT's designated DBE Liaison Officer is the Director of the Civil Rights and Business Resource Center:

Greg Diehl
4201 E. Arkansas Avenue, Room 150,
Denver, CO 80222
303-757-9599
greg.diehl@state.co.us.

The DBE Liaison Officer is responsible for developing, implementing and monitoring all aspects of the DBE Program and ensuring that the CDOT complies with all provisions of 49 CFR Part 26. The DBELO reports to the CDOT Chief Engineer but also has direct access to the Executive Director of CDOT as show in the organization chart attached as **Subpart G, Exhibit D** and Assurance of Direct and Independent Access provided as **Subpart G, Exhibit E**.

To administer the DBE Program, the DBE Liaison Officer is supported by staff within the CDOT headquarters Civil Rights and Business Resource Center as well as the regional civil rights offices. See **Subpart G, Exhibit E** for the current staffing for the Civil Rights and Business Resource Center. CDOT

will continue to ensure that it has adequate staff to administer the program in compliance with 49 CFR Part 26.

Ref: 49 CFR 26.25

Section 4: DBE Financial Institutions

CDOT will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its community and make reasonable efforts to use these institutions. CDOT will also encourage prime contractors to use such institutions.

Ref: 49 CFR 26.27

Section 5: Prompt Payment and Retainage

CDOT requires payment to subcontractors and subconsultants with seven days of payments from CDOT. Additionally, on professional services contracts, regardless of when the payor is paid, payment may not be delayed more than ninety (90) days from invoice. For CDOT's construction contracts, the prompt payment criteria are outlined in CDOT Standard Specifications for Road and Bridge Construction Section 109.06, which can be found at

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/2017-specs-book/standard-specifications-2017-final.pdf/view>.

For professional services and innovative contracts, the requirements can be found in the applicable contract and advertisement. A template of the contract provisions for professional services contracts is provided as **Subpart G, Exhibit F**.

On construction projects, CDOT withholds retainage from prime contractors and provides for prompt and regular incremental acceptances of portions of the prime contract, pays retainage to prime contractors based on these acceptances, and requires a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 days after its payment to the prime contractor. Section 109.06 Retainage and Partial Payments can be accessed at <https://www.codot.gov/business/designsupport/cdot-construction-specifications/2017-construction-standard-specs/2017-specs-book/standard-specifications-2017-final.pdf/view>.

Prompt payment is enforced through collection and review of a monthly prompt payment form (Form 1418 used prior to adoption of B2GNow) and/or the submission of monthly audits in the B2GNow system. In the B2GNow system, subcontractors can validate the payment made by the prime or issue notice to CDOT of a discrepancy in the prime's report. Discrepancies may include untimely payment, payment below amount due, or no payment made. In addition, subcontractors may contact the Regional Civil Rights Office (RCRO) or the engineer to issue a complaint.

CDOT's contract provisions state that delay may take place only for good cause. The project engineer is responsible for reviewing any discrepancies or complaints and making a determination of whether there has been good cause for delay. CDOT's contract provisions allow CDOT to issue corrective actions, withhold payment and/or stop the project if the contractor is not in compliance.

Ref: 49 CFR 26.29

Section 6: DBE Directory

The Colorado UCP maintains and makes available to all persons an online DBE Directory identifying all firms certified by the Colorado UCP at www.coloradodbe.org. The listing for each firm includes the firm's name, address, phone number, fax number, email, and contact person and lists each type of work for which a firm is eligible as a DBE according to NAICS code(s). A complete work code consists of a 6-digit industry sector code and a text description. A directory of ESB firms is also available at www.coloradoesb.org.

Ref: 49 CFR 26.31

Section 7: Overconcentration

If CDOT determines that DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non DBE firms to participate in this type of work, CDOT will devise appropriate measures to address this over concentration and obtain the approval of the concerned USDOT operating administration. CDOT will consider the measures proposed by 26.33(b) and obtain the approval of the concerned OA before implementing any measures.

Ref: 49 CFR 26.33

Section 8: Business Development Program

CDOT has been directed by FHWA to establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. CDOT implements this BDP through its Connect2DOT partnership with the Colorado Small Business Development Centers (SBDC). Additional information on CDOT's BDP can be found in CDOT's scope of work for DBE supportive services submitted each year to FHWA. The BDP website is www.connect2dot.org. CDOT's BDP does not include a mentor-protégé program.

Section 9: Monitoring and Enforcement Mechanisms

CDOT monitors construction work sites and relevant documentation to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. At the award of the project, the contractor's DBE participation plan, including work to be performed by each DBE, is sent to the engineer and RCRO. The RCRO reviews subcontract approval requests to ensure that DBE work is consistent with the commitments. The project engineer is also responsible for providing written certification that the contracting records were reviewed and the work sites were monitored to ensure compliance with this part.

CDOT's current standard special provision is provided at <https://www.codot.gov/business/civilrights/dbe/dbe-documents/dbe-standard-special-provision/view>.

CDOT's forms and information submitted via B2G Now provide the data which is entered into its systems in order to provide a running tally of actual DBE utilization (e.g., payments actually made to DBE firms), including a means of comparing utilization to commitments. CDOT's reports include prorated amounts based upon federal funding percentages.

CDOT may enter in a Memorandum of Understand (MOU) to establish roles and responsibilities for the administration of the program on FHWA local agency projects. Unless an MOU has been executed, CDOT is responsible for the following in regards to local agency projects:

- a. Establishing DBE contract goals;
- b. Providing contract language and forms for compliance with the DBE program;
- c. Evaluating good faith efforts of prime contractors prior to contract award;
- d. Approving subcontract requests;
- e. Approving commitment modifications, including DBE terminations and substitutions;
- f. Conducting commercially useful function reviews;
- g. Conducting contract compliance reviews during the project;
- h. Facilitating the resolution of DBE and prompt payment related issues or complaints; and
- i. Providing final approval for project finalization.

Local agency staff are responsible for the day to day oversight of project activities including the performance of DBEs and prompt payment of all subcontractors.

FTA subrecipient compliance is overseen by the Civil Rights and Business Resource Center and CDOT Division of Transit and Rail. Reporting requirements for FTA grant partners and other frequently asked questions can be found in **Subpart G, Exhibit G**.

Ref: 49 CFR 26.37

Section 10: Race-Neutral Small Business Participation

CDOT's Emerging Small Business (ESB) Program is a legislatively authorized, state-funded race-neutral small business program designed to assist emerging small businesses in competing for CDOT construction, professional services and practice of research contracting opportunities. The rules and guidelines governing the administration of the ESB Program can be found at <https://www.codot.gov/business/civilrights/esb/emerging-small-business-program>. FHWA's approval of CDOT's ESB Program as CDOT's race neutral element is provided as **Subpart G, Exhibit H**. Approval from FTA is included as **Subpart G, Exhibit I**.

CDOT continues to implement the ESB Program in good faith. Some of the efforts pursued by CDOT include providing incentive points to firms that utilize Emerging Small Businesses on professional services contracts, restricting projects under \$1,000,000 to bidding by certified ESBs, and providing financial incentives and setting ESB goals on large innovative contracts. Additionally, CDOT is currently working on developing a bond guarantee program.

Ref: 49 CFR 26.39