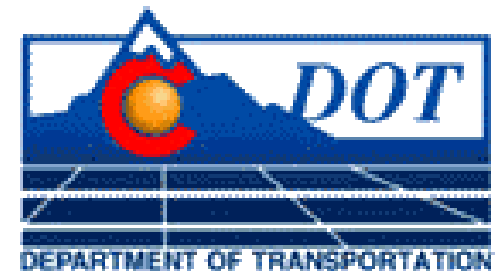


DBE Standard Special Provision Training

Katherine Williams

Small Business Programs & Title VI Supervisor
CDOT Civil Rights and Business Resource Center



The DBE Program

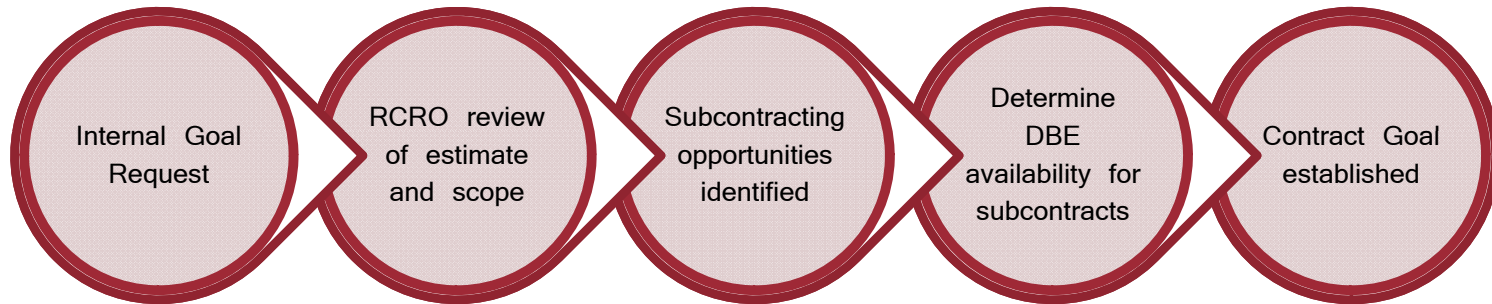
USDOT program to assist Disadvantaged Business Enterprises (DBEs) in competing for Federal-Aid Contracts

- DBE:
 - A business owned and controlled by a socially and economically disadvantaged individual or individuals
 - Must be certified in Colorado and on the Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org
- Federal-Aid Contracts:
 - Wholly or partially financed in part with federal funds
 - Includes federal funds that are passed on to subrecipients

DBE Goals and Commitments

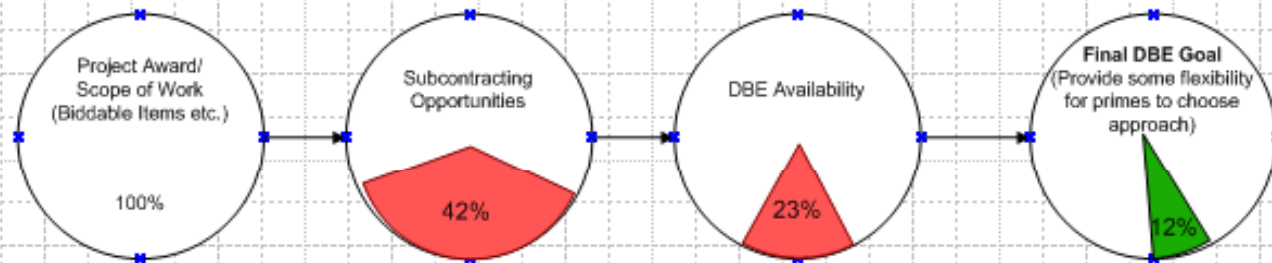
- Overall Goal: CDOT sets an overall goal, which represents how much participation is required for DBEs to be at parity on CDOT contracts.
- Contract Goal: Regional offices evaluate the scope of the contract to determine whether there are subcontracting opportunities for ready, willing and able DBEs. CDOT may increase or decrease contract goals in order to meet the overall goal.
- Commitments: A commitment is a designation of work for performance by a particular DBE. For award, the contractor must either demonstrate enough commitments to meet the goal or other good faith efforts. If commitments are less than the goal, CDOT will amend the goal if other good faith efforts are demonstrated.

Pre-Award Process



Basic Example

This is only an example of how the goal-setting process might work. The actual goal will vary depending on the project type, biddable items, location, DBE availability, etc.



The Project Advertisement

The Contract Goal can be found in the upper right corner of the advertisement.

COLORADO HIGHWAY PROJECT		PAGE 1
READ ORDER NO. 1		CONTRACT ID: C18894
LETTING DATE: 02/21/13	10:00 AM	PROJECTS: NH 0701-216
COUNTIES: MESA		CONTRACT UDBE GOALS: 9.60
REGION 3		GUARANTY: 5% OF BID TOTAL
		FOR PLAN PRICING, CALL (303)757-9313
		WORK DAYS: 175
		RES. ENG.: JASON SMITH, GRAND JCT (970)683-6351

"UDBE" is an acronym no longer used at CDOT. It means "Underutilized Disadvantaged Business Enterprise." CDOT considers all DBEs to be underutilized. Therefore, the "U" will be eliminated from all CDOT materials.

The Project Plans

- **Project Special Provision DBE Contract Goal:**
Establishes the amount of DBE participation required for the project. For bidding, the % is based upon the bid amount.
- **Standard Special Provision DBE Requirements:**
Outlines the requirements for the DBE program.
<http://www.coloradodot.info/business/designsupport/construction/specifications/2011-Specs/standard-special-provisions/mics>.
- **DBE Forms:** No longer provided in plans. All forms will be available at <http://www.coloradodot.info/library/forms/form-numbers-broken-down/cdot-14>.

Forms Due with Bid

- **Form 1413: Bidders List** (all federally-funded contracts)
- **Form 1414: Anticipated DBE Participation Plan** (only if Contract Goal is greater than zero)
- Must be submitted by 10am on letting date to cdot_hq_dbeforms@state.co.us
- Online bidders must still enter DBE participation percentage in Form 714

Commitment Amount v. Eligible Participation Amount

- **Commitment Amount** is the amount committed to a DBE. It may be less than the total subcontract amount.
- **Eligible Participation Amount** is the amount of the commitment that will count toward the contract goal.
 - Deduct subcontracts (including trucking owner-operator subcontracts) to non-DBEs
 - Dealers only count for 60% of the contract.
 - Brokers only count for their reasonable broker fee.

Forms Due From Apparent Low Bidder

Within **five calendar days** of selection, must provide:

- **Form 1415 Commitment Confirmation** (must be signed by the DBE)
- **Form 1416 Good Faith Effort Report** (only if commitments do not meet the contract goal)
- Submit to cdot_hq_dbeforems@state.co.us by close of business on the fifth day.
- **Send originals via mail to the CDOT Civil Rights and Business Resource Center.**

Form 1415: Commitment Confirmation

- <http://www.coloradodot.info/library/forms/cdot1415.xlsx/view>
- Form 1415 required for each commitment listed on the 1414. Previously Form 715.
- Written confirmation of the DBE commitment is required under the federal regulation.
- Form designed to assist primes and DBEs in understanding the commitment and ensure that the DBE's participation is properly counted.
- Due within five calendar days of being designated lowest apparent bidder.
- Prime completes first half and DBE completes second half.

COLORADO DEPARTMENT OF TRANSPORTATION				
COMMITMENT CONFIRMATION				
SECTION 1. This section must be completed by the Contractor.				
Project:				Project:
Bidder/Contractor:				Phone:
Contact:				Email:
DDE Firm Name:				DDE Phone:
DDE Address:				DDE Email:
Commitment Details				
Category	Work to be Performed	DDE Work Code(s)	Commitment Amount	Eligible Participation
Construction				
Trucking				
Supplier				
Services				
			Total	
This section must be signed by an individual with the power to contractually bind the Contractor. You declare under penalty of perjury in the amount degree and any other applicable state or Federal laws that the statements made in this document are complete, true and accurate to the best of your knowledge.				
Signature/Printed Name:	Yes	Signature	Date	
SECTION 2. This section must be completed by the DDE. (Attach additional pages if necessary).				
This document is not a contract with the Bidder/Contractor, it is an acknowledgment of the obligation that the Bidder/Contractor is making to CDOT. The amounts listed above may be less than the subcontractor or purchase order amount, but can never be more, and shall not be final and mark up by the Bidder/Contractor.				
Are you subcontracting directly with the Bidder/Contractor or with one of its subcontractors? If with a subcontractor, provide the firm name.				
Will you be purchasing supplies or materials or leasing or renting equipment from the Bidder/Contractor or its subcontractors? If so, explain.				
Do you intend to subcontract any portion of the work listed above? If so, state in which firms, what work and the approximate amount. Include trucking.				
Will you be providing trucking services on this project? If so, state how many of your own trucks and employees you will have on this project.				
Who within your firm will be supervising and responsible for your firm's work on this project?				
Will you be acting as a broker on this project? If so, state what you will be brokering and your approximate brokerage fee.				
Will you be acting as a supplier on this project? If so, please state what you will be supplying and whether you will manufacture the items.				
This section must be signed by an individual with the power to contractually bind the DDE. You declare under penalty of perjury in the amount degree and any other applicable state or Federal laws that the statements made in this document are complete, true and to the best of your knowledge. You affirm that you are eligible to participate as a DDE on this contract for the work listed above and have the capacity to perform the work as stated.				
Signature/Printed Name:	Yes	Signature	Date	
<i>See the DBE Standard Special provisions for additional information on completing and submitting this form.</i>				
<i>For award CDOT projects:</i> Submit this form to the CDOT Civil Rights and Business Resources Center via Fax to (303)757-3845. All originals must be sent to: CDOT Civil Rights and Business Resources Center, 4284 E. Arkansas Ave. Room 158, Denver, CO 80222.				
<i>For award local agency projects:</i> Submit this form to the local agency. All originals must be sent to: CDOT Civil Rights and Business Resources Center, 4284 E. Arkansas Ave. Room 158, Denver, CO 80222.				

Commitment Details				
Category	Work to be Performed	DBE Work Code(s)	Commitment Amount	Eligible Participation
Construction				
Trucking				
Supplies				
Services				
Total				

- **Work to be performed** – For construction contracts, these are bid items or work types. Group them together if they fall under the same work code.
- **Work code** – A DBE work code is a NAICS code plus a descriptor. To see work codes, search the DBE name at www.coloradodbe.org. The firm must have the appropriate descriptor to count for the work.

Work Codes	
CO UCP NAICS 237110	Storm sewer construction
CO UCP NAICS 237310	Concrete paving (i.e., highway, road, street, public sidewalk)
CO UCP NAICS 237310	Curbs and street gutters, highway, road and street, construction
CO UCP NAICS 237310	Guardrail construction
CO UCP NAICS 237990	Retaining walls, anchored (e.g., with piles, soil nails, tieback anchors), construction
CO UCP NAICS 237990	Riprap installation

DBE Confirmation – Second Half of Form

<p>This document is not a contract with the Bidder/Contractor; it is an acknowledgement of the obligation that the Bidder/Contractor is making to CDOT. The amounts listed above may be less than the subcontractor or purchase order amount, but can never be more, and shall not reflect any mark up by the Bidder/Contractor. All questions must be answered.</p>	
<p>Are you contracting directly with the Bidder/Contractor or with one of its subcontractors? If with a subcontractor, provide the firm name.</p>	
<p>Will you be purchasing supplies or materials or leasing or renting equipment from the Bidder/Contractor or its subcontractors? If so, explain.</p>	
<p>Do you intend to subcontract any portion of the work listed above? If yes, state to which firms, what work and the approximate amount. Include trucking subcontractors and owner-operators.</p>	
<p>Will you be providing trucking services on this project? If so, state how many of your own trucks and employees you will have on this project.</p>	
<p>Who within your firm will be supervising and responsible for your firm's work on this project?</p>	
<p>Will you be acting as a broker on this project? If so, state what you will be brokering and your approximate brokerage fee.</p>	
<p>Will you be acting as a supplier on this project? If so, please state what you will be supplying and whether you will manufacture the items.</p>	

Form 1416: Good Faith Effort Report

- <http://www.coloradodot.info/library/forms/cdot1416.xlsx/view>
- Only required if DBE commitments do not meet the contract goal.
- If known at time of bid, must submit within **five calendar days** of being designated lowest apparent bidder.
- If notified after submission of 1415s that commitments do not meet goal, must submit within **two business** days of notification.
- Guidance for good faith efforts can be found in 49 CFR Part 26, Appendix A @ www.ecfr.gov.
- **Must be notarized.**

Page 1

a. Describe your overall plan or approach to meeting the contract goal. Include how much and what work you intend to self-perform; how much and what work you intend to subcontract; what work areas were identified as subcontracting opportunities for DBEs; and the approximate number of DBEs per area.

b. Describe your efforts to obtain DBE participation (i.e. how you attempted to execute your plan or approach to meeting the contract goal). Include direct outreach (state the DBE solicited, date(s) and method of phone, email or fax); indirect outreach such as events, publications, and/or communication with minority and other organizations that you conducted to reach DBEs (state date(s), location and audience); other efforts you made to assist DBEs in competing for or obtaining contracts (accepting quotes from DBEs that may be higher than other subcontractors, modifications to contract scopes, unbundling, mentoring, etc.); and obstacles you encountered in assisting or contracting with DBEs. Cost alone shall not be a reason to reject a DBE and will be considered in the evaluation of Page 2.

c. If the eligible participation submitted on the Form 1414 was miscalculated, determined to be invalid, or otherwise did not meet the contract goal, provide your justification for such deficiencies and the remedies you have taken or intend to take to avoid the issue in the future. If you have obtained any additional commitments since submission of the bid, attach the Form 1415(s) and the reason why such commitments were not obtained prior to the proposal due date.

- Plan to meet the goal
- Efforts to meet the goal
- Explanation of deficiencies

Page 2

Subcontractor Quote Summary (Attach additional pages if necessary.)					
Subcontractor	DBE (Y/N)	Work Type(s)	Quote Amount	Selected (Y/N)	Reason

Tracking Participation

Commitments v. Contract Goal

- Commitments:

- Must seek to fulfill each commitment even if greater than the contract goal; subject to payment reduction if commitment terminated or reduced and not approved
- Must have good cause and follow termination procedures in order to receive approval of a reduction or termination

- Contract Goal:

- When commitment terminated or reduced, must make good faith efforts to substitute up to the contract goal
- Must also make good faith efforts to obtain additional participation to meet the contract goal on the total earned amount of the contract (i.e. bid amount plus change orders)

Form 1419: DBE Participation Report

COLORADO DEPARTMENT OF TRANSPORTATION			
DBE PARTICIPATION REPORT			
Project:		Project Code:	
Contractor:		Phone:	
Report Period (Quarter or Final):			
For the quarterly report, summarize the DBE participation during the reporting period. For the final report summarize all DBE participation on the contract. Attach additional pages as necessary.			
DBE Firm		Work Status (In Progress/Completed)	
Work this Period	Paid to Date	Eligible Participation to Date	
Work Performed			
DBE Firm		Work Status (In Progress/Completed)	
Work this Period	Paid to Date	Eligible Participation to Date	
Work Performed			

- <http://www.coloradodot.info/library/forms/cdot1419.xlsx/view>
- Must be submitted quarterly and at the end of the project.
- Contractor must document all participation by DBEs that will count toward the contract goal.
- Final report must list all DBE participation.

Counting

- **Must have an approved commitment**
 - New DBE must be approved
 - Must modify commitment if adding new work items
- **Must be certified upon execution of the subcontract (205)**
- **Only count value of work actually performed by the DBE**
 - Non-DBE subcontracts do not count
 - Status as manufacture, dealer or broker on that project
 - DBE must perform commercially useful function
- **Only count amount paid to the DBE**
 - Includes release of retainage

Commercially Useful Function

A DBE must perform a commercially useful function for the any of its participation to count toward the contract goal.

- The DBE must be responsible for the execution of the work of the contract (negotiating price, supervising work, etc.)
- A DBE cannot be a conduit or a pass through
- Rebuttable presumption if DBE does not perform 30% or in manner consistent with industry practice that DBE not performing a CUF

Joint Checks

- Joint checks to DBE must be approved by the RCRO.
- Purpose is to ensure “commercially useful function” of DBEs.
- Can request approval of more than one joint check at a time.
- Must submit a request in writing; it must be signed by the Contractor and the DBE and state the approximate number of joint checks.
- RCRO will strive to issue approval within 48 hours of receiving all information to make a determination.
- Joint checks will not be approved if it appears that they are being used in a discriminatory manner.

Form 1420: DBE Participation Plan Modification Request

Use this form to request:

- Termination/Reduction: lessening the amount to be paid to a DBE
- Substitution: Finding a new DBE to replace a commitment
- New Commitments: To increase participation on the contract due to change orders or unexpected participation
- Waiver: Have made good faith efforts but cannot obtain additional participation or CDOT eliminates work for a DBE.

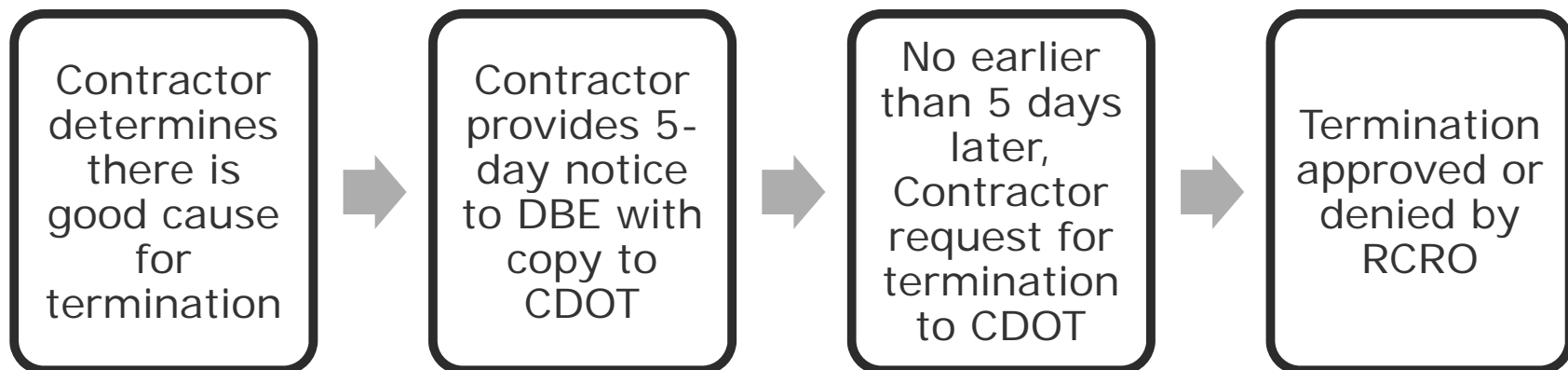
COLORADO DEPARTMENT OF TRANSPORTATION						
DBE PARTICIPATION PLAN MODIFICATION REQUEST						
Section 1. Contractor and Project Information.						
Contractor:				Project Code:		
Project Name:				Earned Amount:	\$	
Contact Name:				Estimated Total Contract Amount:	\$	
Contact Phone:				DBE Goal:	%	
Contact Email:				DBE Participation to Date:	\$	%
Section 2. Approval Request. Attach supporting documentation and additional pages as necessary.						
Reason(s):	<input type="checkbox"/>	Termination/Reduction	<input type="checkbox"/>	Substitution	<input type="checkbox"/>	New Commitment
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	Waiver
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>	Modification
Explanation of Request:						
Contractor Signature:					Date:	
Section 3. Regional Civil Rights Office Review						
RCRO Staff Signature:				= Approved = Denied	Date:	
Comments/Conditions:						

Termination and Reduction

Termination and Reduction Include:

- Self- performance of work by the Contractor.
- Performance by another subcontractor, whether or not a DBE.
- Reduction of the work to be performed, whether by Contractor efficiencies or CDOT elimination.

Required Process:



Good Cause for Termination

- DBE failure or refusal to execute contract
- DBE failure to perform consistent with industry standards
- DBE fails to meet bond requirements
- DBE becomes bankrupt, insolvent or exhibits credit unworthiness
- DBE suspension or debarment
- DBE not a responsible contractor
- DBE voluntarily withdraws and provides written notice to CDOT
- DBE ineligible to receive DBE credit for work
- DBE owner dies or becomes disabled and unable to complete work
- CDOT eliminates work
- Other documented good cause that compels termination

Substitution

- Must make good faith effort to substitute if goal not met.
- Must submit Form 1420 and 1415 for new commitment.
- Substitution includes increasing the work of an already approved DBE to compensate for a termination.
- Substitution must be approved prior to DBE commencing work unless solely increasing quantities of work already committed to participating DBEs.
- Must only substitute up to the contract goal and not up to the original commitment amount.

Change Orders

- Contractor is responsible for ensuring that the contract goal is met when there are any changes to the contract.
- Additional work items and new DBEs must be approved.
- Use Form 1420 and Form 1415 for new commitments.
- If unable to obtain additional participation, must request a waiver from the RCRO.
- Contractor will be subject to payment reductions for failure to meet contract goal or get participation waived.

Held to Goal, Not Commitment %

- Contract Goal 10% on \$1,000,000 contract
- Contractor committed to 12% (\$120,000 in participation)
- Contract increased to \$1,200,000.
- Contractor does not need to obtain additional participation.

A change order that eliminates work committed to a DBE:

- Do not need to substitute where CDOT eliminates work identified for DBE participation.
- Must still follow the termination procedures and request a waiver via the 1420.
- If CDOT also adds work, then Contractor may need to find additional participation.

Closing Out the Project

The Contractor must submit a final Form 1419 summarizing all DBE participation on the project. The RCRO will evaluate DBE participation and determine whether to apply a payment reduction.

Payment reduction possible when:

1. Contractor failed to fulfill a commitment without approved 1420;
2. Contractor failed to meet contract goal either by:
 - a. Not substituting after an approved termination or reduction or not increasing DBE participation in accordance with change orders; **and**
 - b. Did not get a waiver on an approved 1420. .

Calculations – Commitments

- **Step 1:**

- Compare actual participation to commitments.
- Deduct any approved terminations or reductions

- **Example:**

Firm 1: \$40,000 commitment; \$50,000 actual

Firm 2: \$40,000 commitment; \$30,000 actual

Assuming no approved 1420s; Sanctions = \$10,000.

Termination procedures should have been followed and 1420 should have been submitted for reduction to Firm 2.

Calculations - Goal

- **Step 2:**

- Compare actual participation to DBE goal.
- Deduct any waivers

- **Example:**

Bid Amount \$1,000,000

DBE goal 10% (\$10,000)

Change Order \$200,000

Actual Participation \$11,000

Assuming no approved 1420s; Sanctions = \$1,000.

- **Sanctions are not double assessed** i.e. Would not get double sanction for failing to fulfill a commitment and failing to substitute for same DBE.

Other New Related Forms

- **Form 1418, Prompt Payment Report** (Due monthly)
 - **Form 1425, Supplier List** (Due at precon)
- **205B, Sublet Permit** (Due prior to performance)

Questions?

Katherine Williams

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(303)757-9162