



# COLORADO DEPARTMENT OF TRANSPORTATION

## Title VI Assessment & Implementation Plan 2008



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Prepared October 2007

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## **CDOT Title VI Implementation Plan 2008**

- **Introduction**
- **Title VI Assurances**
- **Legal Authorities**

# Introduction & Statement of Policy

Title VI Implementation Plan 2008

## Introduction

The Colorado Department of Transportation (CDOT) is responsible for a 9,142 mile highway system, including 3,703 bridges. Each year, this system handles over 26.1 billion vehicle miles of travel. Although the Interstate system accounts for only about 10 percent, or 914 miles of the total mileage on the state system, 40 percent of all travel takes place on our Interstate highways. The highway construction program is managed by CDOT and built by private contractors. This partnership between government (CDOT) and business works well as CDOT improves and expands Colorado's transportation system. CDOT is committed to achieving full compliance with Title VI of the 1964 Civil Rights Act and all related non-discrimination laws. Through its policies, assurances and procedures CDOT makes every effort to ensure that no person is excluded from participation in or denied the benefits of any CDOT program or activity on the basis of race, color, national origin, sex, disability or age.

The Colorado Department of Transportation is committed to ensuring that all decisions involving its employees, contractors, and the traveling public are based on individual merit, comport with the most fundamental principles of the equality of opportunity and human dignity and are free from discrimination in all its forms. It is the policy of CDOT not to engage in discrimination or harassment against any person because of race, color, national origin, sex, age, or disability. This policy ensures that no person or group shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity administered by CDOT. See CDOT Policy 604.0, Non Discrimination in Federal Programs Policy, Attachment 17.

Inquiries concerning CDOT's policies, compliance with applicable laws, statutes, and regulations, and complaints may be directed to: CDOT, Center for Equal Opportunity, 4201 E. Arkansas Ave., Room 200, (303) 757-9303. Inquiries about the laws and about compliance may also be directed to the Federal Highway Administration, Colorado Division.

# Title VI Assurances

Title VI Implementation Plan 2008

CDOT's nondiscrimination assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance. These assurances bind CDOT as well as its contractors, subcontractors, sub-recipients and sub-grantees as well, and CDOT will insert appropriate nondiscrimination clauses in all of its contracts. See Attachments 1 -10, Nondiscrimination Assurances.

CDOT certifies that discrimination based on sex will be proscribed in its assurances. CDOT also agrees to comply with the appropriate federal statutes, regulations, policies and procedures promulgated by the Federal Highway Administration as a condition to receiving federal funds. See Attachment 2, Nondiscrimination Agreement, and Attachment 3, Non-Discrimination Contract Provisions. CDOT's nondiscrimination assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance.

CDOT certifies that discrimination based on sex will be prohibited in its assurances. CDOT also agrees to comply with the appropriate federal statutes, regulations, policies and procedures promulgated by the Federal Highway Administration as a condition to receiving federal funds.

The following assurances are made by CDOT and are included as Attachments:

Attachment 1	Non-discrimination Assurance
Attachment 2	Non-discrimination Agreement
Attachment 3	Non-discrimination Contract Provisions
Attachment 4	Standard DOT Title VI Assurance
Attachment 5	Blue Back Contracts (Template Currently in Use)
Attachment 6	Required Provisions in Federal Aid Contracts FHWA 1273
Attachment 7	Affirmative Action Requirements for EEO
Attachment 8	DBE Definitions and Requirements
Attachment 9	ESB Program Definition
Attachment 10	OJT Special Provisions

# Legal Authorities

Title VI Implementation Plan 2008

CDOT's commitment to nondiscrimination in all areas of its highway construction, transportation improvements, maintenance and systems program is required by Title VI of the 1964 Civil Rights Act, 42 United States Code 2000d et. seq. which provides that "no person in the United States shall, on the grounds of race, color, national origin be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance."

The Civil Rights Restoration Act of 1987 broadened the scope of Title VI coverage by expanding the definition of the phrase "programs or activities" to include all programs or activities of Federal Aid recipients, sub-recipients, and contractors, whether such programs and activities are federally assisted or not. Public Law 100-259, March 22, 1988.

Title VI's non-discrimination mandate is supplemented by several other parallel laws such as the Federal-Aid Highway Act of 1973, 23 U.S.C. 324 (prohibiting sex discrimination); The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C 4601 to 4655 (providing for fair, uniform and equitable treatment of all persons displaced by highway projects and prohibiting discrimination in relocation assistance); Title IX on the Education Amendments of 1972, 23 U.S.C.109(h)(prohibiting sex discrimination in educational institutions); Section 504 of the 1973 Rehabilitation Act, 29 U.S.C. 790 (prohibiting handicap discrimination); the Age Discrimination Act of 1975, 42 U.S.C. 6101 (prohibiting age discrimination); the Americans With Disabilities Act of 1990, Public Law 101-336 (prohibiting discrimination based on disability); Title VIII of the 1968 Civil Rights Act, 42 U.S.C. 3601(prohibiting discrimination in housing); and Executive Orders 12898 (mandating federal actions to address environmental justice in minority and low income populations) and 13166 (requiring Federal agencies and recipients to improve access for persons with Limited English Proficiency to federally assisted programs.)

Regulations and Orders promulgated under Title VI are: 23 Code of Federal Regulations 200(Federal Highway Administration Regulations); 49 Code of Federal Regulations 21(Department of Transportation Regulations); 28 Code of Federal Regulations 50(Department of Justice Implementing Regulations); and Department of Transportation Order 1050.2

A summary of these authorities is contained in Attachment 11.

## Specific Title VI Responsibilities Delegated to CDOT

The Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) was enacted August 10, 2005, as Public Law 109-59. SAFETEA-LU authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 5-year period 2005-2009. CDOT Civil Rights Programs are non-exempt under SAFETEA-LU, and therefore Federal Highway Administration (FHWA) oversight continues. The Title VI responsibility to give nondiscrimination assurances and take affirmative action to correct any deficiencies standing in the way of full Title VI compliance has been delegated by the Federal Highway Administration to CDOT. A copy of this delegation is contained in Attachment 12. The partnership between CDOT and FHWA continues to be an important part of ensuring compliance with the letter and spirit of laws and regulations. CDOT's Executive Director is fully committed to and responsible for implementing Title VI requirements.



## **Organization & Staffing**

- **CDOT Executive Director**
- **Center for Equal Opportunity**
- **Title VI Coordinator**
- **Regional Civil Rights Managers**
- **Statewide Title VI Advisory Group**



# Organization & Staffing

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## Executive Director

CDOT's Executive Director is ultimately responsible for assuring full compliance with the provisions of Title VI and has directed that non-discrimination is required of all agency employees. See CDOT's Policy Statement above on page 1. Pursuant to 23 CFR 200.9 (b) (1), the Director has established an adequately staffed Civil Rights Unit to fulfill Title VI statutory and regulatory requirements. This Civil Rights unit, located at CDOT Headquarters, is known as the Center for Equal Opportunity (reference CDOT Center for Equal Opportunity Organizational Chart page 10).

Pursuant to 23 CFR 200.9 the Center for Equal Opportunity has been delegated the responsibility for Title VI actions, its manager has been designated the CDOT "Title VI Administrator" and has access to the Executive Director via the Director of the Division of Human Resources and Administration to whom the Manager has direct reporting responsibilities. The Title VI Administrator has designated a Title VI Coordinator who will prepare an implementation plan, conduct annual assessments of pertinent CDOT program areas, make recommendations to enhance compliance, accept, investigate and resolve Title VI complaints, and help prepare all necessary reports. The Title VI Coordinator reports to the Equal Opportunity Supervisor of the Center for Equal Opportunity (reference CDOT Center for Equal Opportunity Organizational Chart page 10).

## Center for Equal Opportunity

The Center for Equal Opportunity was created in 1994 in response to a need to coordinate the department's civil rights programs and create a resource of civil rights cross-trained staff for greater effectiveness. The Center is responsible for developing and implementing the Department's Civil Rights and Non-discrimination programs in accordance with state and federal laws, and under the direction of CDOT's Transportation Commission and Executive Director. The Mission of the Center for Equal Opportunity is to advocate Civil Rights by:

- Promoting and maintaining a qualified and diverse CDOT and contractor workforce;
- Promoting equal access to transportation improvements, maintenance and systems for Colorado citizens;
- Promoting and maintaining equal opportunity for small and underutilized highway construction contractors and consultants.

The Center does this by providing the following services:

- Training and coaching and business development services for small and underutilized highway construction contractors and consultants;

- Training and job placement for entry-level highway construction workers;
- Training, consulting and community outreach to plan for, design and maintain fair and equal access to transportation improvements, maintenance and services;
- Training, coaching and mediation to prevent and resolve employee and contractor conflict and complaints;
- Civil Rights Complaint investigation and resolution;
- Facilitating Environmental Justice and Limited English Proficiency requirements in programs and reporting;
- Improving communication links between the Center, the Regions, and CDOT staff;
- Timely completion of DBE Certification applications and renewals;
- Completion of all outstanding UCP/Certification technology projects;
- Implementing updated Title VI plans, monitoring and reporting mechanisms.

The Center is responsible under Title VI to:

- Establish a formal program for monitoring and enforcement of non-discrimination;
- Staff the program adequately in order to provide technical support and consultation to CDOT program areas; and
- Report CDOT's efforts and compliance with the law to FHWA on an annual basis.

### **Title VI Coordinator**

The Title VI Coordinator is charged with the responsibility for implementing and ensuring CDOT's compliance with Title VI responsibilities. Title VI Coordinator has responsibility to:

- Serve as resource in investigation of complaints;
- Collect and analyze statistical data;
- Develop a program to conduct Title VI reviews of program areas;
- Conduct review of programs, grant applications and special emphasis areas, sub-recipients and state program directives;
- Monitor Title VI activities and reports to appropriate FHWA Administrators
- Provide Training on Title VI;
- Develop Title VI information for dissemination;
- Review state program directives in coordination with state program officials and, where applicable, include Title VI and related requirements;
- Establish procedures for resolving deficiency status and reducing to writing the remedial action agreed to be necessary.

### **Regional Civil Rights Managers**

CDOT also has Civil Rights Managers in each of its six transportation regions. These managers are responsible for monitoring Title VI issues in their respective regions of the state and at the project level. Regional Civil Rights Managers (RCRMs) are responsible for quality control in Civil Rights programs under their jurisdiction. The

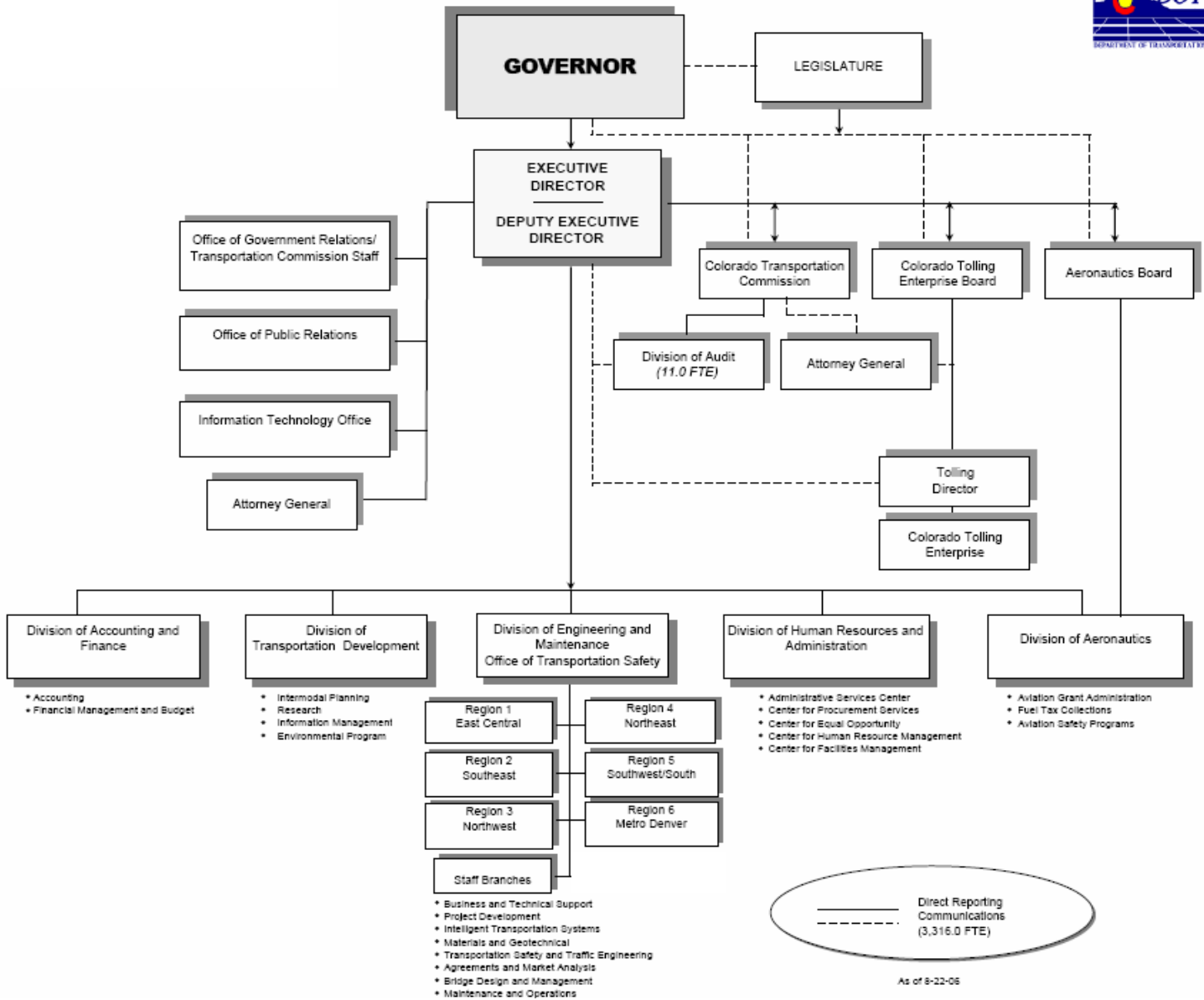
RCRMs cooperate with the Headquarters Center for Equal Opportunity to help set project specific DBE and OJT goals, conduct regional contract compliance reviews, ensure regional compliance with Civil Rights laws and regulations, investigate discrimination complaints in the region, and to develop appropriate outreach activities. In addition they assist the Title VI Coordinator with region specific compliance investigations, data collection, reviews of program areas, Title VI training and reports.

## **Statewide Title VI Advisory Group**

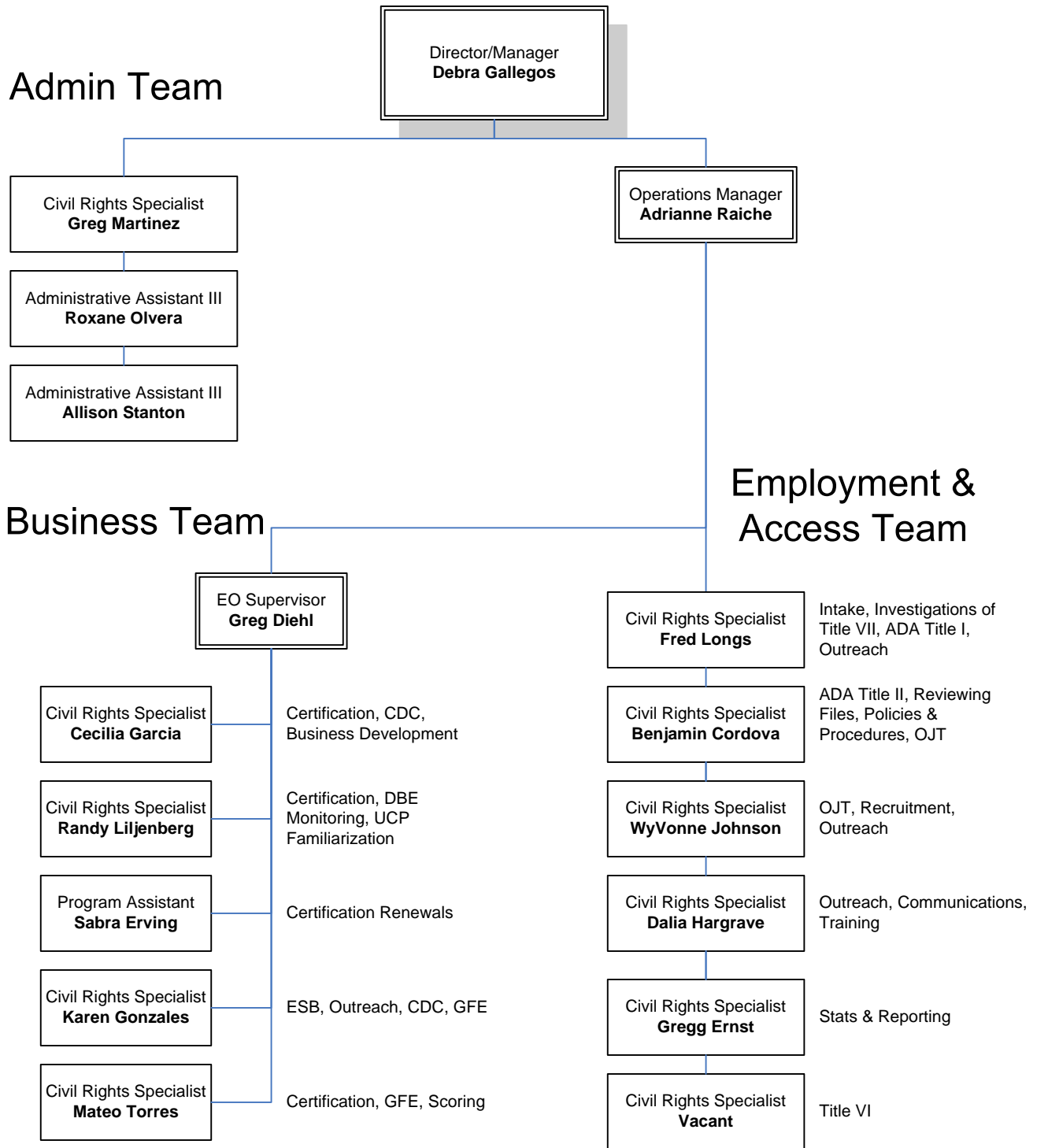
An interdisciplinary Statewide Title VI Advisory Group (STAG) has been created at CDOT to assist in the sustenance of a thorough and consistent Title VI program. The STAG Group helps determine efficient and effective ways of Title VI information gathering, dissemination and support to various program areas of CDOT. Its vision is to promote non-discrimination throughout CDOT and in the programs and activities participated in or funded by CDOT. The group's mission is to develop and implement a multidisciplinary process of Title VI information collection and dissemination through subject matter experts from CDOT program areas. This group works with the Title VI Coordinator to help make CDOT's Title VI programs even more successful. This group includes a representative from the following programs:

- Planning
- Environmental
- Right of Way
- Construction
- Safety and Traffic
- Local Agency Programs
- Procurement

# CDOT Organizational Chart



# CDOT Center for Equal Opportunity Staff





## **TITLE VI MONITORING, REVIEW RESPONSIBILITIES & PROGRAM AREA PLANS**

The Colorado Department of Transportation provides the standard Title VI assurances as detailed in previously referenced Attachments 1 - 10. In addition, each CDOT Special Emphasis Program area commits itself to particular assurances and confronts specific compliance challenges as outlined below.

Each program area is described below including project results for 2007, assessment, and goals for 2008.

The Title VI Coordinator conducts annual reviews of each special emphasis program area to evaluate their compliance with Title VI.

# Planning Program

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## Program Description

The Planning Units (Regional and Statewide) have the responsibility to develop long-and short-range plans for CDOT to provide efficient transportation services to the citizens of Colorado. These plans serve as the blueprint for highway, bridge, and aviation improvement. To meet these challenges, a comprehensive transportation planning process is used which incorporates input from the public in coordination with the various Metropolitan Planning Organizations (MPO's), Regional Transportation Organizations (RPO) and Statewide Planning Organizations (SPO).

## Program Results for 2007

CDOT-Division of Transportation Development (DTD) is committed to the development of a 2035 Statewide Transportation Plan that recognizes the needs of all Colorado citizens and strives to obtain the input from Colorado's diverse communities.

CDOT-DTD incorporated a comprehensive study on "Mobility Needs of Low Income and Minority Households" into the environmental justice analysis section within the 2035 Statewide Plan socioeconomic technical report. The study included a literature review, demographic research and a series of statewide focus groups that included individuals from these population groups. Each focus group was comprised primarily of members of the public who were from low income and/or minority household. The seven focus groups were held in Alamosa, Denver, Durango, Greeley, Lamar, Leadville, and Pueblo because of their demographic composition.

Ten regional planning forums and ten prioritization meetings were held around the state. These meetings served as some of the major public involvement efforts for the 2035 plan.

Statewide Transportation Advisory Committee (STAC) meetings were held monthly (as necessary) to provide updates on planning activities including legislative updates and emerging transportation issues. Those that expressed interest were submitted meeting notifications as well as meeting documentation via electronic mail. Those without email accounts were sent information by fax or postal. Meeting agendas and minutes can be accessed on CDOT's Statewide Planning website.

CDOT-DTD's Statewide Planning Unit works cooperatively with the Office of Financial Management and Budget (OFMB) to submit proposed Statewide Transportation Improvement Program (STIP) amendments to all those that express interest. Information is also available on the internet via CDOT's Statewide Planning website.

The Statewide and Regional Planning website is continually updated to include information on on-going planning activities, draft documents for public review and contact information.

### **Assessment**

The major Title VI challenges inherent in the planning process are to secure effective and comprehensive public involvement and participation in the planning process, including participation of low income and minority populations; to seriously consider and analyze all input; to address prospective impacts and benefits; and to document all of the above.

### **Plan for 2008**

In cooperation with the Center for Equal Opportunity, provide training in Title VI for Planning managers and consultants to help ensure consistency of compliance activities in Title VI areas, including how the Title VI discrimination complaint process works.

Continue to identify specific outreach methods for use by the program in planning activities that ensures contact with all persons, including low income and minority populations and persons with disabilities. Among these methods are, but not limited to:

1. Develop a Spanish version of the draft and final 2035 year plan.
2. Upon request by the public, Spanish speaking staff will be on hand, for public open houses, meetings and other plan outreach events.
3. Through the use of the CDOT website, CDOT-DTD plans to further develop online tutorials, translated documents, and other multi-lingual helps for Colorado's LEP populations.
4. Evaluate how to utilize the results of the comprehensive study on "Mobility Needs of Low Income and Minority Households", referenced in the "Program Results" section above



# Environmental Program

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## Program Description

The Division of Transportation Development and the Environmental Programs Branch (EPB) performs studies to assess various environmental factors as they relate to project development, including social and economic elements. The Branch office also provides technical support to the regions during project development process. Much of the Title VI work done during the project development phase involves incorporating Environmental Justice (EJ) standards into the National Environmental Protection Agency's (NEPA) environmental assessment process. Together these standards require evaluation of impacts on the cultural, social and economic features of communities, and evaluation of whether these impacts are disproportionately high and adverse to minority or low income populations. Typically a consultant is hired to assess potential impacts. As is true in the planning program, effective and meaningful public involvement is critical to the overall success of the environmental programs effort. Ensuring non-discrimination in the solicitation and selections of consultants who work on the NEPA projects is also critical.

## Program Results for 2007

All projects included an evaluation of need for the non-English speaking public. Projects and public meetings held in a community of non-English speakers provide language translation necessary as determined by the evaluation.

EPB had numerous successful experiences in working with individual communities through projects; obtaining their input to future projects, adjusting and minimizing impacts to communities through redesign. Example projects include I-70 East, US 34 (Loveland), US 50 (Pueblo to Kansas), and I-25 Pueblo Freeway.

Environmental justice was treated like the other resource areas as a matter of course in EPB's day-to-day work.

EPB ensured that appropriate mitigation measures were included in NEPA documents when it conducted formal review of the decision document. Also, EPB project liaisons attended project meetings and offered suggestions to the project team as needed.

Programmatic information on the internet, interpreters, and using flexible meeting times combined with the participation of community leaders has increased the level of participation in Environmental Programs.

Appropriate consideration of public input was evident in the review of meeting notes and through correspondence with the public informing them how their comments would be used.

The Environmental Programs Branch (EPB) provided periodic environmental justice training for CDOT and consultants and holds quarterly Regional Planning and Environmental Managers (RPEM) meetings.

EPB included a discussion on Environmental Justice issues as a part of the NEPA 101 for Engineers training class.

EPB and FHWA CO Division monitor project performance in meeting the Environmental Justice Guidelines.

The NEPA Manual which has just been finalized discusses environmental justice and highlights examples of best practices in the environmental justice area.

### **Assessment**

Overall, the EPB Programs have been successful in addressing Title VI needs. Continuation of activities similar to those completed in 2007 will assure continued success.

The key challenge for this program is to continue to increase the rate of involvement by low-income and minorities populations in public involvement during environmental assessments under NEPA.

### **Goals for 2008**

1. Continue to engage in activities similar to those described in the “Program Results” section shown above.
2. Continue to provide NEPA training, which will include socioeconomic aspects of community evaluations, and combine this type of training in the new Engineering Academy training classes.
3. Continue to make maintenance staff aware of environmental justice issues during the environmental awareness training at the Maintenance Academy.

Assure that CDOT complies with requirements of Title VI as well as EO 12898, through continued and routine monitoring of all environmental projects (meetings, deliverables, and products).

# Right of Way Program

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## **Program Description**

CDOT Right-of-Way (ROW) Program consists of two major functions—acquisition, and relocation.

CDOT's Right of Way Program acquires real estate for federally funded highway improvement projects. In this capacity the Right-of-Way Program manages and coordinates the plans/surveys, appraisal and acquisition of real property, and relocation assistance services to displaced persons for transportation improvements projects. This work includes plans and survey preparation, property management, appraisals and appraisal reviews, negotiations with property owners, and relocation assistance, which may be done by staff or private consultants. CDOT's ROW Program also reviews the right-of-way processes of local jurisdictions.

CDOT staff acquire property in a manner that ensures that the owner of real property to be acquired are treated fairly and consistently, to encourage and expedite acquisition by agreement with such owners; to minimize litigation and relieve congestion in the courts and to promote public confidence in the acquisition program by ensuring that persons displaced as a result of the project are treated fairly consistently and equitably so that they will not suffer disproportionate injuries as a result of projects designed for the benefit of the public.

Title VI requires fair and equitable treatment of all members of the public who have property acquired or must be relocated during the location of a transportation facility or highway alignment. Staff accomplishes this by strictly complying with the mandates of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (the Uniform Act). The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted programs or projects

The following acquisition and relocation process is followed by CDOT right of way staff.

### ***Acquisition***

For any person whose real property interests may be impacted by a CDOT project, the acquisition of those property interests will comply fully with the Uniform Act. As noted above it was created to provide for and insure the fair and equitable treatment of all such persons. To further ensure that the provisions contained within this act are applied "uniformly," CDOT requires Uniform Act compliance on any project for which it has oversight responsibility regardless of the funding source. Additionally, the Fifth Amendment of the United States Constitution provides that private property may not be taken for a public use without payment of "just compensation". All effected owners will

be provided notification of the acquiring agency's intent to acquire an interest in their property including a written offer letter of just compensation specifically describing those property interests. A ROW Specialist is assigned to each property owner to assist them with this process.

### ***Relocation***

In certain situations, it may also be necessary to acquire improvements that are located within a proposed acquisition parcel. In those instances where the improvements are occupied, it becomes necessary to "relocate" those individuals from the subject property (residential or business) to a replacement site. The Uniform Act provides for numerous benefits to these individuals to assist them both financially and with advisory services related to relocating their residence or business operation. The benefits available under the Uniform Act are complex, and are available to both owner occupants and tenants of either residential or business properties. In some situations, only personal property must be moved from the real property and this is also covered under the relocation program.

As soon as feasible, any person scheduled to be displaced is furnished with a general written description of the displacing agency's relocation program which provides at a minimum, detailed information related to eligibility requirements, advisory services and assistance, payments, and the appeal process. CDOT staff provides notification that the displaced person(s) will not be required to move without at least 90 days advance written notice. For residential relocatees, this notice cannot be provided until a written offer to acquire the subject property has been presented, and at least one comparable replacement dwelling has been made available. Relocation benefits are provided to all eligible persons regardless of race, color, religion, sex, or national origin. Benefits under the Uniform Act, to which each eligible owner or tenant may be entitled, are determined on an individual basis and explained to them in detail by an assigned ROW Specialist.

### **Program Results for 2007**

Based on the current list of appraisers, no minority or women appraisers were used during the past year. Members of both groups were offered contracts, but were too busy to accept.

The acquisition and relocation information booklets, (two different publications) have been previously translated into Spanish.

H.C. Peck and Associates, a woman-owned business was awarded numerous contracts for relocation services.

Consulting companies identified specialized communities and their need for special representation.

Interpreters were hired for specific cases, for Spanish and Korean speakers.

The CDOT Right-of-way Unit reported that a review of negotiators logs and input from the regions showed no disparity among how members of various groups were treated in the conduct of negotiations.

During the open public meeting process, all groups were encouraged to provide their input into the location of projects which affect them. Bi-lingual and non-English notices were utilized to provide information to the groups involved.

### **Assessment**

While procedures are in place to ensure consistent selection processes, few minority or female appraisers are selected to provide appraisal services, consultants for appraisal, and acquisition/relocation/title, closing & escrow services.

A potential exists for inequitable treatment of persons relocated or from whom property is acquired.

While some materials are made available in Spanish as well as English, no printed materials are available in other languages.

### **Goals for 2008**

1. Assess and address the need for versions of significant ROW documents in languages other than English.
2. Work with the Center to ensure more adequate diversification of appraisers, and to provide updated Title VI and EJ training for ROW managers.

# Construction Program

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## **Program Description**

The Construction Program is responsible for the administration of all phases of the new highway construction projects including advertisement, pre-qualification of contractors, competitive bid letting, award of contract, inspection and acceptance of work, payment, change orders, contract modifications, and small business and minority business participation.

Contract Compliance activities are delivered through the Market and Contract Analysis Branch of CDOT, in conjunction with the Regional Civil Rights Managers.

The Construction program works to ensure that project plans, bidding and consulting opportunities and work sites are open to all regardless of race, color, or national origin. This is accomplished through interaction with regional Civil Rights Managers, technical support for DBEs offered by the Business Programs Office of the Center for Equal Opportunity and business and workforce development delivered through the CDOT Development Center (CDC) and a consortium of OJT providers. The Construction program has established an overall annual goal of 12.8% Disadvantaged Business Enterprise (DBE) participation in all highway contracting opportunities, including professional services, for 2008.

A unique program called the Business Opportunity and Workforce Development Program (the BOWD Program) was funded in July 2006 by FHWA, and continues to exist. The BOWD Program is a tailored program of technical assistance and targeted business and workforce development delivered to 20 DBE selected companies based on each company's assessed strengths, weaknesses and business needs.

CDOT administers a BOWD-related OJT program and an OJT program that is administered outside of the parameters of the BOWD.

## **Program Results for 2007**

In conjunction with the Regional Civil Rights Managers, the Market and Contract Analysis Branch of CDOT, conducted contract compliance reviews.

CDOT carried out several key initiatives. These included: a Contractor Symposium, called "Contacts 2 Contracts" for both Consultants and Contractors, increased one-on-one Small Business orientations at the Construction Development Center, ongoing individualized services for DBEs including training and other activities designed to increase the participation of women and the success of DBE businesses active in the state's highway program.

The Colorado Department of Transportation (CDOT) is one of a select group of State DOTs to be chosen to participate in the Federal Highway Administration's (FHWA) new Business Opportunity and Workforce Development (BOWD) Program. The BOWD Program is a results-oriented and FHWA funding is performance-based. That means, funding for 2008 is based on the measurable results achieved during 2007. Based on its performance for 2007, the BOWD has been funded for 2008.

#### WHAT IS THE BOWD PROGRAM?

- A two-year pilot program that better equips selected Disadvantaged Business Enterprises (DBEs) to bid, win and successfully participate in CDOT highway projects
- Specifically focused on 20 highly motivated DBE companies and their workforce in order to help them be more successful in pursuing highway-related work
- A legacy initiative that will establish ongoing partnerships (bonding, financing, etc.) for the DBE community beyond the two-year pilot program

#### WHAT IS THE BENEFIT TO CDOT?

- Increases CDOT's capacity by nurturing selected DBE capabilities so that they are better able to compete for and fulfill CDOT highway contracts, whether as a prime or subcontractor
- Assists CDOT in meeting federal DBE goals by creating a pool of highly-qualified DBE firms
- Demonstrates support for and solidifies CDOT's relationship with local DBE communities around the state

#### WHAT IS THE BENEFIT TO BOWD PARTICIPANTS?

- Unrivaled technical assistance and business development resources, with thousands of dollars worth of customized training, partnerships and workforce assistance
- Tailored support designed to take a DBE's business to the next level
- Opportunities for partnerships that increase revenue and enhance networking effectiveness

BOWD participants underwent a detailed formal evaluation process. This process resulted in a customized short-term and long-term Individual Assistance Plan for each participant. In addition, the most common barriers to success among the participants were identified; and program components were developed to address these barriers. CDOT believes that it has been very successful in implementing the program components to help DBE firms to reduce the barriers.

The BOWD also includes an OJT component.

In addition to the concentrated activities with the selected group of BOWD participants, the CDOT Center for Equal Opportunity, the CDOT Development Center, and the Regions continued their work with other DBE's to assist them in their efforts to obtain contracts or sub-contracts for work with CDOT.

CDOT requested proposals from qualified individuals and/or firms interested in assisting the Division of Human Resources & Administration/Center for Equal Opportunity in conducting a Disparity Study, within the legal framework established by 49 CFR Part 26 and court rulings. This study will assist in determining if a disparity exists between the availability of capable minority/women owned or disadvantaged firms and transportation industry contracts awarded to those firms, the absence or presence of discrimination in transportation federal aid contracting in Colorado, as well as how identified disparities relate to the implementation of an affirmative action program in Colorado's Highway Construction and Design Program.

Separate from the BOWD, CDOT administers an OJT program in accordance with the Training Special Provision 23 CFR Part 230.111. CDOT revised its OJT Special Provision to implement the requirements of 23 CFR Part 230.111. In addition, CDOT has engaged in activities to develop a more effective and accurate system to track success in implementing the spirit of 23 CFR Part 230.111.

### **Assessment**

A need continues to conduct contract compliance reviews. CDOT construction compliance reviews revealed that there is a distinct lack of female presentation/utilization within prime construction companies who do business with CDOT.

CDOT should continue to carry out the types of outreach activities described in the "Program Results" section, above.

CDOT should continue to engage in the BOWD activities similar to those carried out in 2007, as they have proven to be successful.

CDOT continues to evaluate and monitor its DBE Program to ensure it is as effective as possible. To that end, CDOT has conducted an intensive review of its Good Faith Effort process and the success Prime Contractors are having in meeting highway contract goals.

CDOT also analyzed the relationship between the sizes of its highway projects and the ability of Prime Contractors to meet the DBE goals on those projects. A regression analysis showed that when CDOT projects approach the \$5 Million range, the number of Prime Contractor bids that failed to meet the contract DBE goal begins to climb at a rapid pace.

CDOT has taken that information and has instituted a comprehensive DBE outreach process that focuses specifically on projects at or above the \$5 Million mark. Since



instituting this process in August 2007, all CDOT projects at or above this range have seen a substantial increase in DBE participation.

A need exists to complete the Disparity Study.

CDOT needs to complete the development of accurate and effective tracking systems for both the BOWD-related OJT Program and the OJT program that implements the Training Special Provision 23 CFR Part 230.111.

**Plan for 2008 (calendar year or Federal Fiscal Year)**

1. CDOT will continue to conduct contract compliance reviews.
2. CDOT will continue to engage in the BOWD activities similar to those carried out in 2007. Among the following, but not limited to them, CDOT will:
  - a. Continue to administer the program components that were developed to address the barriers to success that were identified in the individual BOWD participant assessments; and
  - b. CDOT should continue to engage in other BOWD activities similar to those carried out in 2007.
3. CDOT will continue to focus on activities to increase the level of DBE participation on large projects, specifically on projects at or above the \$5 Million mark.
4. CDOT selected the winning team/firm for the Disparity Study was selected in October 2007 and work is already underway on some of the initial study phases. The Disparity Study will take one year to complete and CDOT looks forward to leveraging the findings to ensure its program continues to be both effective and narrowly tailored.
5. CDOT will complete the development and implementation of effective and accurate tracking systems for both the BOWD-related OJT Program and the OJT program that implements the Training Special Provision 23 CFR Part 230.111.
6. The winning firm/team for the Disparity Study was selected in October 2007 and work is already underway on some of the initial study phases. The Disparity Study will take one year to complete and CDOT looks forward to leveraging the findings to ensure its program continues to be both effective and narrowly tailored.
7. CDOT will study the Consultant selection process with the goal of bringing forward recommendations that better align that process with goal setting and good faith efforts currently used in the Construction bidding process.

8. CDOT will increase the self sufficiency and workforce development of DBE consultants and contractor through partnering efforts with financial institutions, local chambers and minority contractor associations among others to increase the success of DBE firms that can bid, win, and participate on CDOT projects.
9. CDOT will better inform CDOT Project Engineers, Procurement and Agreement staff and managers about the purpose and success of Center programs designed to increase the viability of DBEs, ESBs and small businesses.

# Local Agency Program

Title VI Implementation Plan 2008

## Program Description

The Local Agency Program staff work with municipalities and other local agencies to monitor and supervise federally and state funded projects that are actually administered by these sub recipients. Local Agencies are required to meet the same requirements that CDOT would be required to meet if CDOT administered the project(s) directly.

## Program Results for 2007

The FFY 2006 Assessment rated the program's public involvement program as medium in effectiveness, on a scale of low to very high. In 2007, some Regions were able to increase public participation through the selection of easily accessible locations and through using flexible meeting times to increase diverse public participation. Other regions did not experience as much success.

Some regions stated that they had made a limited amount of printed materials available in Spanish.

Some regions provided Title VI training to local agencies

The program staff was able increase DBE and public involvement by using technology such as the internet to publicize projects.

## Assessment

The key challenge for this program is increased understanding of Title VI requirements, and more diverse public and DBE participation in local agency projects.

Efforts should be increased to assist local agencies in meeting Title VI requirements. It is clear that local agencies could use more technical support and training on Title VI issues, especially in the areas of Limited English Proficiency and Environmental Justice.

It is difficult to have a clear understanding of how well the local agencies are doing in meeting the requirements of Title VI; but current information indicates that they are not being in implementing Title VI in their projects as CDOT is in projects that CDOT administers directly. A need exists for CDOT to collect additional information to better understand the level of compliance and the obstacles that prevent local agencies from being more effective.

### **Goals for 2008**

1. Develop and present training to local agencies in Title VI, Environmental Justice and Limited English Proficiency.
2. Provide technical support in the area of Title VI compliance for CDOT staff and local agencies.
3. Seek methods for providing input into, and receiving output from, the local agency program assessment that will be conducted by FHWA over the next two years as a means to collect information to better understand the level of compliance and the obstacles that prevent local agencies from being more effective in Title VI implementation.

# Procurement Program

Title VI Implementation Plan 2008

## Program Description

The Procurement Program is responsible for obtaining products and services for all of CDOT including the Maintenance and Operations program areas that are responsible for the preservation and upkeep of the state transportation system. CDOT maintenance forces maintain the highway system, plowing snow and repairing pavement. Each year, these men and women plow more than 6 million miles of highway. They also repair road damage and potholes, using more than 350,000-400,000 tons of asphalt and more than 2.5 million gallons of liquid asphalt in preservation activities. Thus the Procurement program not only procures items for CDOT but is also responsible for obtaining goods and services at a fair and reasonable price.

The current procurement process is race neutral and demographic statistics are not kept. This is because the State of Colorado system, which Procurement must use, does not set DBE goals. Although the program area does not set goals for involving minority or women owned firms or tribal member firms during the fiscal year it selects contractors and vendors without regard to race, color or national origin or gender. The Program makes efforts to break requests for proposals and bids into smaller packages to make opportunity more widely available where possible and to target minority vendors to orient them on how to obtain CDOT work.

## Program Results for 2007

Some staff performed outreach in regard to solicitations by randomly contacting vendors who have designated their commodity/service on Colorado BIDS, and ensuring that 50% of those randomly contacted are Disadvantaged Business Enterprises (DBE). BIDS is a State of Colorado system used to advertise state agency solicitations to vendors. BIDS includes a listing of vendors by commodity and service; and vendors are encouraged to identify themselves as DBE's.

The program also provides information regarding upcoming bids to DBE/Emerging Small Business (ESB) program outreach person in the CDOT Center for Equal Opportunity, so that she may inform vendors regarding upcoming solicitations.

The program participates in the Rocky Mountain Minority Council's events and provides vendors with information regarding Procurement and its processes.

## Assessment

The key challenge remains diversification in selection of vendors, contractors and consultants to participate in maintenance sub-contracts, provide materials for maintenance work and provide services and materials for CDOT generally. While the

current system employs a non-discriminatory process, the result is that the participation by minority or DBE contractors and vendors in the race neutral program is small.

The actions stated in the sections 1 and 2 above, “Program Results”, are not carried out uniformly by all staff in the Procurement Branch.

CDOT Procurement must function within the parameters established by the State Procurement Office.

At this time, the BIDS system does not capture information on the amount of dollar value of awards made to DBE’s.

### **Goals for 2008**

1. CDOT Center for Equal Opportunity will train Procurement staff regarding all the CDOT Equal Opportunity programs that exist so that staff can more fully encourage DBE contractors, vendors and suppliers to participate in procurement activities with CDOT.
2. The Procurement Branch will continue to establish more targeted outreach to qualified vendors and contractors to increase the diversification in the selection of consultants and vendors to do maintenance subcontracts and provide materials for maintenance work.
3. CDOT will engage in efforts to incorporate modifications into the Colorado BIDS system that will:
  - a. Encourage DBE’s to self-identify as DBE’s;
  - b. Identify dollar values of awards made to vendors who have identified as DBE’s.

# Safety and Traffic Engineering Programs

Title VI Implementation Plan 2008

## Program Description

The Safety and Traffic Engineering Programs consist of two major functional areas— Safety Education Programs, and Safety Engineering Programs. These programs are developed and administered by the Safety and Traffic Engineering Branch.

The Safety Education Programs are designed to help local law enforcement agencies and other agencies with special funds to improve safety through a variety of programs. Among these, but not limited to these, are programs to apprehend drunk drivers, programs to increase the use of safety belts and child car seats, and programs to reduce deaths and injuries within communities.

The Safety Engineering Programs primary function is to enhance safety through engineering solutions.

All programs use a problem identification process that is based on the statewide crash reports which contributes to program development. From the Problem ID, the program addresses the issues and problems that impact the roadways and all drivers at the community level.

The current system of awarding funds for proposals from local agency public works, police and engineering departments, state agencies, contractor and community groups who apply for funds is race neutral and therefore demographic statistics were not kept for involving minority or women owned firms or tribal members. However, the Safety and Traffic Engineering Branch funds programs without regard to race, color, national origin, and gender.

## Program Results for 2007

The Safety and Traffic Engineering Programs Branch includes a diverse staff that provides fluency in speaking, reading, writing and interpreting Spanish, Farsi, French, German, and Hebrew. In addition, one staff member can speak Greek fluently.

The Branch translated the Colorado Strategic Plan for Improving Roadway Safety (SPIRS) into Spanish. The SPIRS is a very significant document. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) mandates that the Colorado Department of Transportation coordinate with all stakeholders in the development of the Colorado SPIRS. The SPIRS is a three-year planning document for the State of Colorado. Its comprehensive, collaborative and functional safety strategies have been developed with a broad range of stakeholders in Education, Enforcement, Engineering and Emergency Services. SPIRS will serve as a guide each year for the development and updating of stakeholder safety plans.

The Branch also translated the Flaggers Manual, the Work Zone Safety Flip Book, and the Work Zone Best Practices Guide into Spanish.

The Branch awarded two major contracts to minority-owned businesses, and eight additional contracts that focus on outreach to the Hispanic, African American, American Indian, and other minority communities. In total, 18% of all of Safety and Traffic dollars were awarded to these ten contractors.

The Branch provided mini-grant opportunities to minority and women focused community organizations to promote more community involvement within the overall safety belt program. The Branch also specifically solicited proposals from minority and tribal groups and saw results from these efforts.

The Branch provides internationally recognized symbols on signage on a case-by-case basis, depending on circumstances for the particular situation.

Finally its Roadway Safety Program provides assistance to all traffic and safety professionals and some professionals that receive training are low income and minority persons.

### **Assessment**

Overall, the Safety and Traffic Engineering Branch has been and is very successful in actions to implement Title VI requirements. This Branch can expect to achieve success in the future by continuing its efforts to do things that are similar to what the Branch did in 2007.

### **Goals for 2008**

In 2008, the Safety and Traffic Engineering Program Branch will:

1. Continue to encourage sub-grantees and contractors to use more diverse sub-consultants that are representative of the community. It will also continue to specifically solicit grant and mini-grant proposals from minority and tribal groups and use local contractors whenever possible to contribute to the addressing community issues and diversity.
2. Continue to work with the Center and CDOT's Public Information Office to ensure that no individual is excluded from essential information that may affect their ability to use State highways and roads by providing media in both English and other languages as determined appropriate and to include medial messages, posters, brochures, and billboards.
3. Continue to take actions similar to those that were carried out in 2007.



# Research Program

Title VI Implementation Plan 2008

## **Program Description**

The Research Office is responsible for the development of transportation research projects that include engineering-related projects as well as other areas such as transit, transportation, environmental studies and socioeconomic analysis. Some transportation-related research projects are funded with Federal-aid funds. The research may be conducted by the Research Office but is often contracted to universities or consultants who have the capabilities and staff to perform the research. Participation by institutes of Higher Education is obtained through responses to Request for Proposals.

## **Program Results for 2007**

While proposals were reviewed and selected without regard to race, color, national origin or sex, no DBEs were listed as selected consultants, and none of the eight Colorado Hispanic Serving Institutes of Higher Education were selected to participate with CDOT on any research projects.

## **Assessment**

The Research Program's primary Title VI task is to ensure that discrimination is avoided through a Request for Proposal process that is fair and impartial and not biased toward one particular consultant or university. The key challenge in the Research Program continues to be obtaining diversification in the selection of consultants and universities to do research with CDOT.

It should be noted that there are no Minority Institutes of Higher Education in Colorado. Likewise none of the eight Colorado Hispanic Serving Institutes of Higher Education are research institutes with the funding and faculty for full scale research projects.

## **Goals for 2008**

1. Continue to use of creative outreach processes in the problem statement solicitations, with a special emphasis on the inclusion of Hispanic Serving Institutions.
2. Break larger proposals into smaller components where possible in order to involve more diverse consultants and smaller colleges.



## **TITLE VI COMPLIANCE**

- **Compliance**
- **Complaint Procedure**
- **Annual Work Plan**

## **Compliance**

Title VI Plan development, implementation and yearly assessments are the responsibility of CDOT's Center for Equal Opportunity. Center staff members work in partnership with the regional Civil Rights Managers in six regional offices around the state. The Center reports directly to the Director of CDOT's Division of Human Resources and Administration. Through its Stewardship Agreement with CDOT, FHWA exercises oversight of CDOT's Civil Rights programs including the Title VI Plan's implementation and yearly assessments. For more detailed information on the Stewardship Agreement between the Center for Equal Opportunity and FHWA's with regard to Civil Rights see Attachment 15, FHWA/CDOT Stewardship: Civil Rights. As noted below under "Complaint Procedures," all Title VI complaints and investigative reports are forwarded to FHWA for review from one central CDOT location – the Center for Equal Opportunity. See Attachment 16, Official Point of Contact for CDOT External Civil Rights Issues.

## **Complaint Procedures**

For each complaint received the Title VI Coordinator identifies the complainant by race, color, sex or national origin, and identifies the recipient. A log is maintained which documents the date the complaint was received, the nature of the complaint, the date the investigation was completed and the date of the final disposition of the complaint. The Title VI Coordinator, and/or Regional Civil Rights Managers in the region involved, both of whom are trained in compliance investigations, investigates complaints made against Prime Contractors and other sub recipients by subcontractors, vendors and suppliers. The Title VI Coordinator/Specialist forwards a copy of the complaint and a copy of the investigative report to FHWA within 60 days of receipt of the complaint. Complaints made against CDOT are forwarded to FHWA for appropriate investigation and disposition.

All Title VI complaints, which are investigated and resolved in the regions, are forwarded to the CDOT Headquarters Center for Equal Opportunity for review before being submitted to FHWA in order to ensure consistency in interpretation and handling.

## **Annual Work Plan**

A summary of the Work Plan for 2008 follows.

1. Provide technical support to CDOT staff and sub recipients in Title VI and answer general inquiries.
2. Meet with multidisciplinary Statewide Title VI Advisory Group quarterly or semi-annually, depending on need.
3. Update the Title VI web page.
4. Design a Title VI, Environmental Justice and Limited English Proficiency training schedule for CDOT staff and Local Agencies.

5. Develop a procedure to conduct Title VI reviews of local agencies and consultant contractors. This may be a two-year project, depending on timing and outcomes from the anticipated local agency program assessment that will be conducted by FHWA over the next two years.
6. Conduct Title VI Assessment of program areas to assess the effectiveness of Title VI compliance within each program. Prepare the Assessment of 2008 Title VI activities and Plan for 2009 for dissemination to the FHWA by October 2008.
7. Schedule Title VI training for subject matter experts and relevant employees who help comply or report on efforts in Title VI compliance in each program. September.



## Attachments

- Attachment 1 Non-discrimination Assurance
- Attachment 2 Non-discrimination Agreement
- Attachment 3 Non-discrimination Contract Provisions
- Attachment 4 Standard DOT Title VI Assurance
- Attachment 5 Blue Back Contract
- Attachment 6 Required Provisions in Federal Aid Contracts FHWA 1273
- Attachment 7 Affirmative Action/EEO Requirements
- Attachment 8 DBE Definitions and Requirements
- Attachment 9 ESB Program Definitions
- Attachment 10 OJT Special Provisions
- Attachment 11 Summary of Title VI & Exec. Orders
- Attachment 12 FHWA Letter: Delegation
- Attachment 13 23 C.F.R 200.9
- Attachment 14 CDOT Civil Rights Org Chart
- Attachment 15 Stewardship Agreement  
FHWA/CDOT: Civil Rights
- Attachment 16 FHWA Letter: Official Point of Contact

## Attachment 1

### NON-DISCRIMINATION ASSURANCE

The Colorado Department of Transportation (CDOT), HEREBY GIVES ASSURANCES:

1. That no person shall on the grounds of race, color, national origin, sex, age, and disability, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity conducted by CDOT regardless of whether those programs and activities are Federally funded or not. CDOT hereby agrees to carry out this assurance in compliance with Title VI and related statutes in all of its programs and activities.
2. That CDOT will promptly take any measures necessary to effectuate this agreement.
3. That each CDOT program, activity, and facility will be conducted and/or operated in compliance with nondiscriminatory requirements under all Federal Laws and Regulations.
4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended by the Federal Highway Administration. These assurances are binding on CDOT, its recipients, sub grantees, contractors, subcontractors, transferees, successors in interest and other participants.
5. That CDOT will insert a notification in all solicitations for bids for work or material subject to the Regulations that notifies all bidders that it will affirmatively ensure that disadvantaged business enterprises will be afforded full opportunity to submit bids in response to all invitations and will not be discriminated against on the grounds of race, color, national origin, sex, age, or disability in consideration for an award. CDOT will also adapt this notification for all proposals for negotiated agreements.
6. CDOT will insert appropriate nondiscrimination clauses in every contract subject to the Act and the Regulations.
7. CDOT agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the act, the Regulations, and this agreement.

(Signature on File)

\_\_\_\_\_

CDOT Executive Director

Date \_\_\_\_\_

## Attachment 2

### NONDISCRIMINATION AGREEMENT

FEDERAL HIGHWAY ADMINISTRATION, COLORADO DIVISION  
AND  
COLORADO DEPARTMENT OF TRANSPORTATION

The Colorado Department of Transportation (CDOT) hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

#### TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds, whether schools and colleges, government entities, or private employers – must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs required that Federal-aid recipients, sub recipients and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the recipient and sub recipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance.

### Attachment 3

The Colorado Department of Transportation (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with title VI of the Civil Rights Act of 1964, 78 Stat. 2512, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-Aid Highway Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program) conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations

3. and made in connection with the Federal-aid Highway Program, and, in adapted form in all proposals for negotiated agreements:

The Colorado Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat.252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

4. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
5. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
6. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
7. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to
8. Rights to space on, over or under such property.



9. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under The Federal-aid Highway Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under The Federal-aid Highway Program.
  
10. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
  
11. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
  
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the Federal-Aid Highway Program and is binding on it, other recipients, sub grantees, contractors, subcontractors, transferees, successors in interest and other participants in the Federal-Aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Recipient)

By \_\_\_\_\_  
(Signature of Authorized Official)

STANDARD DOT TITLE VI ASSURANCES

The State of Colorado, (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a)(1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-aid Highway Program:

1. That the Recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal-aid Highway Program and, in adapted form in all proposals for negotiated agreements:

The (State Highway Department) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the clauses of Appendix B of this assurance shall be included as a covenant running with the land, in any deed from the United States effecting a transfer of real property; structures, or improvements thereon, or interest therein.
5. That where the recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal-aid Highway Program; and (b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Highway Program.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

## Attachment 5

Agency or Department Name: <b>Department of Transportation</b> Department or Agency Number: <b>HAA</b> Contract Routing Number:
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### CONSTRUCTION PROJECT CONTRACT<sup>1</sup>

THIS CONTRACT, made this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the State of Colorado for the use and benefit of the Department of Transportation, hereinafter referred to as “the State” or “the Department”, and «**Contractor**», hereinafter referred to as “the Contractor”.

#### RECITALS

1. Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number «Project\_Code» in Fund Number «Fund», Orgn Number «Organization», Appropriation Account «Appropriation\_Acct», Program «Program», Function «Function», Object «Object», Subobject «Subobject», Reporting Category **1340**.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to section 24-92-103, CRS, the State issued an Invitation For Bids for a Transportation Construction Project, and the Contractor’s bid was selected in accordance with State law as a result of the advertisement for Colorado Project Number «PROJECT», «Project\_Code».

#### THE PARTIES THEREFORE AGREE AS FOLLOWS:

##### Section 1. Scope of Work

The Contractor shall, in a good and workmanlike manner at his own cost and expense, and strictly in accordance with this Contract, furnish all materials and do all work not herein specifically excepted, necessary or incidental to the complete construction of Colorado Project No. «PROJECT», consisting of «**Work**», located «Located» in «County» County in the State of Colorado. The work is described in the plans and specifications for the project.

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<sup>1</sup> To be executed in triplicate, one copy for CDOT, one for the Contractor and one for the State Controller.

## **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. The Colorado Special Provisions contained in section 21 of this Contract
2. Special Provisions for this project
  - a. Project Special Provisions
  - b. Standard Special Provisions
3. The Plans
  - a. Detailed Plans
  - b. Standard PlansCalculated dimensions will govern over scaled dimensions.
4. Supplemental Specifications
5. Standard Specifications for Road and Bridge Construction (“Standard Specifications”)
6. This Contract proper
7. The Contractor’s Proposal, Exhibit A
8. The Contract Exhibits and Attachments in descending order

## **Section 3. Performance Period**

The Contract shall be effective upon approval by the State Controller, or designee, or on \_\_\_\_\_, whichever is later (“Effective Date”). The Contract shall terminate upon the date of final payment for the work or final audit of the work, whichever is pertinent to this Contract, unless earlier terminated by the State. The Contractor understands and agrees that any contract work performed or costs incurred prior to the Effective Date shall not be compensated under the terms of this Contract.

The parties agree that “time is of the essence” and that work shall begin under this Contract and that all work must be completed as set forth in the project special provisions.

## **Section 4. Price – Payment Terms**

The State shall pay the Contractor, according to the requirements of the specifications and subject to the following paragraph, the amounts required for the completed work at the unit prices set forth in the Contractor's Proposal, and such further amounts as may be required for extra work or materials, all according to the provisions and subject to the conditions as set forth in the specifications above referred to.

Payment pursuant to this Contract will be made, as described in the specifications, from available funds that are currently encumbered for this Contract in a maximum amount not to exceed «**Contract\_Amount**». The liability of the State for payment shall be limited to such funds.

## **Section 5. Payment and Performance Bond**

This Contract shall not take effect or be in force until the Contractor shall have furnished and delivered to the State a Payment and Performance Bond, attached hereto as Exhibits B and C, acceptable to the State, in a penal sum equal to the nearest integral \$100.00 in excess of the Project Commitment Amount duly executed by a corporate surety, qualified and licensed to do business in Colorado and maintaining a general agent therein. The Project Commitment Amount is the total bid per "Schedule" hereto attached plus the estimated amount of force account items designated for bonding in the Project Special Provisions.

## **Section 6. Legal Authority**

The Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person(s) executing this Contract on behalf of the Contractor warrant(s) that such person(s) have full authorization to execute this Contract.

## **Section 7. Incorporated Terms and Conditions**

The Contractor understands and agrees that the Contractor's Proposal, the Plans, the Standard Specifications for Road and Bridge Construction, and any Special Provisions for this Project, all being applicable to the project are each and all incorporated into and made a part of the terms and conditions of this Contract. These documents are on file in the office of the Department of Transportation at Denver, Colorado, together with such alterations and modifications as may be made in accordance with the provisions of said Plans and Specifications. The Contractor further agrees to adhere to the Federal Requirements in Exhibit D attached hereto.

## **Section 8. Records**

- A. MAINTENANCE. The Contractor (and any subcontractor) shall maintain a complete file of all books, records, accounts, and other written or computerized materials which pertain to the accounting and performance of work, the delivery of services, and the compliance with applicable requirements under this Contract, and shall maintain such records for a period of three (3) years after the date of termination of the Contract, or for such further period as may be necessary to resolve any matters which may be pending.
- B. ACCESS. The Contractor (and any subcontractor) shall permit the State, the FHWA, and their designated representatives, during normal business hours, to access all books, records, accounts, and other relevant material concerning the work performed or services provided under this Contract for the purpose of investigation, audit, and copying to ascertain compliance with, or to detect violation of, any applicable Federal and/or State law or regulation or with the terms of the Contract, or to evaluate performance under the Contract. All records or information obtained in this manner

shall be used only for the purpose described herein, except as otherwise authorized by law.

- C. SUBCONTRACTS. For the benefit of the State, the Contractor shall include the language of this paragraph in all Subcontracts, in order to require the subcontractor(s) to comply with the record maintenance and access conditions described above.

### **Section 9. Remedies, Termination Provisions, Insurance**

The Standard Specifications for Road and Bridge Construction, which is incorporated herein by reference, contains provisions for remedies, termination and insurance. The Contractor agrees to comply with such provisions.

### **Section 10. Funding**

The parties expressly recognize and agree that this Contract is subject to and contingent upon the continuing availability of federal and state funds for the purposes hereof. In the event that the Department does not receive such funds or any part thereof, the Department may immediately terminate this Contract without liability, including liability for termination costs. In the event of termination, the Contractor is entitled to payment, in accordance with this Contract, for work completed on the project as of the date of termination.

### **Section 11. Representatives and Notice**

**The State will provide liaison with the Contractor through the State's Resident Engineer for this project. Said Resident Engineer will also be responsible for coordinating the State's activities under this contract. All communication, notices and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.**

If to the State:

«RE»

CDOT Region «REGION»

2000 S. Holly Street

Denver, CO 80228

«Cont\_Zip\_Code»

(303) 984-5272

e-mail: «RE»@dot.state.co.us

If to the Contractor:

«Contractor\_Rep»

«Contractor»

«Cont\_Address»

«Cont\_City», «Cont\_State»

«Cont\_Phone»

e-mail:

### **Section 12. Assignment and Successors**

The Contractor agrees not to assign rights or delegate duties under this Contract [or subcontract any part of the performance required under the Contract] without the express, written consent of the State [which shall not be unreasonably withheld]. Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

### **Section 13. Changes - Indefinite Quantity Contract - Funding Letter**

This is an indefinite quantity contract for the services specified herein. The number of units required to complete the work services may vary. The parties have estimated the quantity and cost of such services, but such estimates are estimates only.

- A. Funds are available and encumbered in the amount of the estimate. The Contractor shall not perform Work that creates a financial obligation of the State exceeding the amount of available funds specified herein. The Contractor shall notify the representative in writing, using a form substantially equivalent to the sample Notification of Commitments Within 10% of Original Project Amount attached as Exhibit E, when State commitments, paid and unpaid, are within 10% of the amount of funds available. The State is not liable beyond the amount of funds specified as available in this paragraph.
- B. The state may allocate more or less funds available on this contract using a Funding Letter substantially equivalent to Exhibit F and bearing the approval of the State Controller or his designee. The Funding Letter shall not be deemed valid until the State Controller or his designee shall have approved it.

### **Section 14. Contract Modification**

Bilateral changes within the general scope of the contract may be executed using the contract modification order process described in this paragraph and in the Standard Specifications using a form substantially equivalent to the sample contract modification order attached as Exhibit G for any of the reasons listed in the Standard Specifications.

### **Section 15. Governmental Immunity**

Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et.seq., CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, et. seq., CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, et. seq., CRS, as now or hereafter amended.

### **Section 16. Severability**

To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.



### **Section 17. Waiver**

The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

### **Section 18. Entire Understanding**

This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in writing executed and approved pursuant to the State Fiscal Rules.

### **Section 19. Survival of Certain Contract Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Contractor.

### **Section 20. Modification and Amendment**

This Contract is subject to such modifications as may be required by changes in Federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. Except as provided above, or except as may otherwise be authorized by terms of this Contract, no modification of this Contract shall be effective unless agreed to in writing by both parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

## SECTION 21 SPECIAL PROVISIONS

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS 24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. **FUND AVAILABILITY. CRS 24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

**[Applicable Only to Intergovernmental Contracts]** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. **[Not Applicable to Intergovernmental Contracts] VENDOR OFFSET. CRS 24-30-202 (1) and 24-30-202.4.** The State Controller may withhold payment of certain debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or its agencies, as a result of final agency determination or reduced to judgment, as certified by the State Controller.

8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. **EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.

10. **[Not Applicable to Intergovernmental Contracts]. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES AND RESTRICTIONS ON PUBLIC BENEFITS. CRS 8-17.5-101 and 24-76.5-101.** Contractor certifies that it shall comply with the provisions of CRS 8-17.5-101 et seq. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise shall comply with the requirements of CRS 8-17.5-102(2)(b). Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. Failure to comply with any requirement of this provision or CRS 8-17.5-101 et seq., shall be cause for termination for breach and Contractor shall be liable for actual and consequential damages.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears or affirms under penalty of perjury that he or she (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq., and (iii) shall produce one form of identification required by CRS 24-76.5-103 prior to the effective date of this contract.

*Revised October 25, 2006*

***Effective Date of Special Provisions: August 7, 2006***

**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

CONTRACTOR:

STATE OF COLORADO:

**BILL RITTER JR.  
GOVERNOR**

«**Contractor**», \_\_\_\_\_ By \_\_\_\_\_  
Legal Name of Contracting Entity

Executive Director

\_\_\_\_\_  
Social Security Number or FEIN

Department of Transportation

\_\_\_\_\_  
Signature of Authorized Officer

LEGAL REVIEW:

**JOHN W. SUTHERS  
ATTORNEY GENERAL**

\_\_\_\_\_  
Print Name & Title of Authorized Officer

By: **Contract Waiver #182** \_\_\_\_\_

CORPORATIONS:  
(A corporate attestation is required.)

Attest (Seal) By \_\_\_\_\_  
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER  
LESLIE M. SHENEFELT**

By \_\_\_\_\_

Date \_\_\_\_\_

Effective Date: April 1, 2004

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS**, That we «**Contractor**» of the County of «**Cont\_County**», in the State of «**Cont\_State**» as Principal, and \_\_\_\_\_ of \_\_\_\_\_, in the State of \_\_\_\_\_ as surety, are held and firmly bound unto the **STATE OF COLORADO**, in the penal sum of «**Whole\_Thing**» **DOLLARS («Rounded»)**, with interest thereon at the rate of eight per cent (8%) per annum until paid, in good and lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated \_\_\_\_\_, 2007, for the construction of a PROJECT described as Colorado Project No. «**PROJECT**», located «**Located**» in «**County**» County in the State of Colorado. The work consists of «**Work**»; said work of construction to be done according to the requirements of said contract;

**NOW THEREFORE**, if the said Principal shall at all times duly and faithfully discharge its, his or their duties under said contract, and shall duly and faithfully perform all the obligations thereof, and shall and will indemnify and save harmless the State of Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said State of Colorado or any persons as provided by the Statutes of the State of Colorado may or shall suffer by reason of the default of the Principal or anyone acting for him as sub-contractor or otherwise in the performance of this contract, or by reason of any failure on the part of said Principal, his agents, servants or employees, his sub-contractor or sub-contractors, or any of them, in the performance of said contract or any portion thereof, these presents shall become void, otherwise to be and remain in full force and effect.

**THE STATE OF COLORADO** shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said Principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

No representation or statement of the Principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by Principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

This agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals at \_\_\_\_\_ the day and date above written.

Contractor: «**Contractor**»

**ATTEST:**

SignName: \_\_\_\_\_  
Type Name \_\_\_\_\_  
SuretyCo. \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Bonding Agent: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Sign Name: \_\_\_\_\_  
Type Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Approved by the STATE OF COLORADO, Department of Transportation, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2007.

By

-----  
Chief Engineer, Department of Transportation

State of Colorado  
Department of Transportation

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS**, That we «**Contractor**» of the County of «**Cont\_County**», in the State of «**Cont\_State**», as Principal, and \_\_\_\_\_ of \_\_\_\_\_, in the State of \_\_\_\_\_, as surety, are held and firmly bound unto the STATE OF COLORADO, in the penal sum of «**Whole\_Thing**» **DOLLARS** («**Rounded**»), with interest thereon at the rate of eight percent (8%) per annum until paid, in good and lawful money of the United States of America, for the payment whereof, well and truly to be made, we bind ourselves, our and each of our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated \_\_\_\_\_, 2007, for the construction of a PROJECT described as Colorado State Project No. «**PROJECT**», located «**Located**» in «**County**» County in the State of Colorado. The work consists of «**Work**»; said work of construction to be done according to the requirements of said contract;

**NOW, THEREFORE**, if the said Principal, his sub-contractor or sub-contractors, and each and all of them, shall duly pay for all labor, materials, and other supplies used or consumed in the performance of the work contracted to be done or any part thereof, and if the said Principal shall also fully indemnify and save harmless the State of Colorado, and all persons as provided by the Statutes of the State of Colorado, from any and all damages or loss which the said State of Colorado or any persons as provided by the Statutes of the State of Colorado, may or shall suffer by reason of the default of the Principal or anyone acting for him as sub-contractor in connection with such payments, these presents shall become void, otherwise to be and remain in full force and effect.

**THE STATE OF COLORADO** shall be under no obligation, except as expressly provided by statute, to withhold any sums due the said Principal under the terms of this contract, or to protect in any other way the surety or sureties, claimants or others.

Exhibit C

2 of 2

No representation or statement of the Principal made to the surety or sureties in application for this bond, or otherwise, shall be read into or be a part of this bond or binding in any way on the obligee herein.

No assignment by Principal to surety of the proceeds of such contract shall be binding, except as to any net surplus after paying all claims chargeable by law or by said contract, against the proceeds thereof.

No extension of time of performance of said contract or delay in the completion of the work thereunder shall invalidate this bond or release the liability of the surety thereunder.

This agreement shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado, or such assistant as he may designate.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals at \_\_\_\_\_ the day and date above written.

Contractor: «**Contractor**»

**ATTEST:**

SignName: \_\_\_\_\_  
Type Name \_\_\_\_\_  
SuretyCo. \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Bonding Agent: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Sign Name: \_\_\_\_\_  
Type Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Approved by the STATE OF COLORADO, Department of Transportation, This \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2007.

By

-----  
Chief Engineer, Department of Transportation



## Exhibit D

### FEDERAL REQUIREMENTS

#### Federal laws and regulations that may be applicable to the Work include:

**A. 23 C.F.R. Part 635 concerning “Construction and Maintenance Provisions”, and 23 C.F.R. Part 633, concerning “Required contract Provisions for Federal-Aid Construction Contracts.” The Contractor shall obtain from CDOT and comply with FHWA Form 1273.**

**B. Executive Order 11246 of September 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction Contracts awarded in excess of \$10,000).**

C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All Contracts for construction or repair).

D. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction Contracts in excess of \$2,000. This act requires that all laborers and mechanics employed by Contractors or sub-Contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction Contracts in excess of \$2,000).

F. Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts and Subcontracts in excess of \$100,000).

G. 42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

H. The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

I. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the Contractor is acquiring real property and displacing households or businesses in the performance of this Contract.)

J. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

K. The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91.

L. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

M. The specific Contract provisions described in Title 49, Code of Federal Regulations, section 18.36(i), which are also deemed incorporated herein. The Contractor shall incorporate such provisions into any Subcontract (s) as terms and conditions of those Subcontracts.

### Notification of Commitments Within 10% of Original Project Amount

This is to notify you that the commitments on this project for completed work, paid and unpaid, is within 10% of the amount of funds available, as detailed below.

Project number: \_\_\_\_\_

Project code: \_\_\_\_\_

Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

#### Available Funds

Original contract: \$\_\_\_\_\_

Planned force account: \$\_\_\_\_\_

Total \$\_\_\_\_\_

90% of total \$\_\_\_\_\_

#### Commitments

Amount paid to date \$\_\_\_\_\_

Estimated value of completed work not yet paid \$\_\_\_\_\_

Total \$\_\_\_\_\_

Contractor signature \_\_\_\_\_ Title \_\_\_\_\_

COLORADO DEPARTMENT OF TRANSPORTATION  
**CONTRACT FUNDING INCREASE/DECREASE AND APPROVAL LETTER**  
 Region: Complete section 1 and submit to CDOT Controller's office.

**AUTHORITY:**  
 State Controller Policy letter on June 12, 1996  
 CDOT Controller letter on May 23, 1996

(1) This form to be used for the following contracts/situations only (check the appropriate situation):  
 \_\_\_indefinite quantity, order more/add more                      \_\_\_utility/railroad, underestimated total cost  
 \_\_\_CDOT construction, sum of CMO's                                      \_\_\_LA construction, underestimated cost  
 \_\_\_CDOT construction, underestimated total cost                      \_\_\_CDOT consultant, underestimated cost

**SECTION 1 (Region use)**

Date: (2)		Project code (3)	
To: CDOT Controller (FAX #(303) 757-9573 or e-mail CONTROLLER)		Project # (4)	
From: Region # (5)	Office: (5)	Phone # (5)	FAX # (5)

CDOT has executed a contract with: (6)  
 Address: (6)

FEIN # (6)				Contract routing # (7)			COFRS encumbrance # (indicate PO, SC or PG #) (8)	
Fund (9)	Orgn. (9)	Appro. (9)	Prgm. (9)	Func. (9)	Object/Sub-obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub/Phase (9)

Original contract amount \$ (10)	Has a Budget Request been processed to cover the contract amount increase? ___yes ___no (14)
Previous Funding Letter(s) total \$ (11) (Funding letter #1 thru # __)	Preparer's name (15)  PHONE NO:
This Funding Letter total \$ (12) (# __)	Contract Administrator's/Business Manager's Approval (16)  PHONE NO:
Adjusted contract amount \$ (13)	CDOT Designee Approval (17)
	Local Agency approval (18)

**SECTION 2 (Controller's Office use) (19)**

Total allotment amount \$ (19)	Commission budget \$ (19)
-----------------------------------	------------------------------

If construction: __CE pool elig. (19)	CE charges \$ (19)	Indirect chgs \$ (19)	Adjusted contract amount plus total CE & indirect charges calculation \$ (19)
I have reviewed the financial status of the project, organization, grant and have determined that sufficient funds are available to cover this increase, effective as of _____ (19)			
State Controller or Delegee (20)			Date (20)

Exhibit G

<b>COLORADO DEPARTMENT OF TRANSPORTATION CONTRACT MODIFICATION ORDER</b>	Project No.	Project code
	Location	
	Date	Project order No.
Contractor	Estimated cost to project <input type="checkbox"/> Increase <input type="checkbox"/> Decrease \$	
Complete address	Total additional days allowed to complete work	Federal oversight <input type="checkbox"/> yes <input type="checkbox"/> no
Modification title		

I accept this order, for work to be performed and prices on which payment is to be based.	
<b>REQUIRED IN ACCORDANCE WITH INSTRUCTIONS IN CDOT'S CONSTRUCTION MANUAL</b>	<b>REQUIRED FOR ALL CHANGE ORDERS</b>
Approved by FHWA Operations Engineer: _____ Date _____	Authorized by Project Engineer: _____ Date _____
<b>OPTIONAL</b>	Contractor representative: _____ Date _____
Approved by Region Transportation Director: _____ Date _____	Approved by Resident Engineer: _____ Date _____
	<input type="checkbox"/> Participating <input type="checkbox"/> Non-participating <input type="checkbox"/> Participation as noted Approved funding by Region Program Engineer: _____ Date _____

# Attachment 6

July 21, 1999

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## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 Electronic version - March 10, 1994

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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### ATTACHMENTS

#### A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

##### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. Selection of Labor: During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

##### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of

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employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

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c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

**8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

**9. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the S each July for the duration of the project, indicating the number minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contract will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to related subcontracts of \$10,000 or more.)

a. By submission of this bid, the execution of this contract subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-construction contractor, subcontractor, material supplier, or vendor as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washroom, restaurants and other eating areas, timeclocks, locker rooms, other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by executive directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, custom, or otherwise. The only exception will be for the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collector roads which are exempt.)

#### 1. General:

a. All mechanics and laborers employed or working on the site of the work will be paid unconditionally and not less than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of the contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classification and wage rates conformed under paragraph 2 of this Section



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actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

**b. Trainees:**

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic,

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watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

**9. Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

**V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

**1. Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

**2. Payrolls and Payroll Records:**

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including

apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR**

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

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a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

**VII. SUBLETTING OR ASSIGNING THE CONTRACT**

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

**VIII. SAFETY: ACCIDENT PREVENTION**

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

**IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

**NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID  
HIGHWAY PROJECTS**

18 U.S.C. 1020 reads as follows:

*"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or*

*Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed,*

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*or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or*

*Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 21, 1916, (39 Stat. 355), as amended and supplemented;*

*Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."*

**X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

**XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

**1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection

with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions

and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

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**AFFIRMATIVE ACTION REQUIREMENTS  
 EQUAL EMPLOYMENT OPPORTUNITY**

**A. AFFIRMATIVE ACTION REQUIREMENTS**

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

**Goals and Timetable for Minority Utilization**

Timetable - Until Further Notice			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
	2670 Fort Collins	Larimer.....	6.9%
	3060 Greeley	Weld.....	13.1%
	Non SMSA Counties	Cheyenne, Clear Creek, Elbert, Grand, Kit Carson, Logan, Morgan, Park, Phillips, Sedgwick, Summit, Washington & Yuma.....	12.8%
158 (Colo. Spgs. - Pueblo)	1720 Colorado Springs	El Paso, Teller.....	10.9%
	6560 Pueblo	Pueblo.....	27.5%
	Non SMSA Counties	Alamosa, Baca, Bent, Chaffee, Conejos, Costilla, Crowley, Custer, Fremont, Huerfano, Kiowa, Lake, Las Animas, Lincoln, Mineral, Otero, Prowers, Rio Grande, Saguache.....	19.0%
159 (Grand Junction)	Non SMSA	Archuleta, Delta, Dolores, Eagle, Garfield, Gunnison, Hinsdale, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, San Juan, San Miguel	10.2%
156 (Cheyenne - Casper WY)	Non SMSA	Jackson County, Colorado.....	7.5%
<b>GOALS AND TIMETABLES FOR FEMALE UTILIZATION</b>			
Until Further Notice.....			6.9% - Statewide

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**AFFIRMATIVE ACTION REQUIREMENTS  
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These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Par 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. As used in this specification, and in the contract resulting from this solicitation, the "covered area" is the county or counties shown on the Invitation for Bids and on the plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

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**AFFIRMATIVE ACTION REQUIREMENTS  
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**B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these Specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes;
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractor toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

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5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its union have employment opportunities available, and maintain a record of the organization's responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
  - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
  - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

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- g. Review, at least annually, the Contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc. such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and Contractor's activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligation.

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8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables; and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form, however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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**C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.**

1. *General.*

- a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract. Provisions (Form FHWA 1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to Section 140 of Title 23, U.S.C., as established by Section 22 of the Federal-Aid highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract provisions.
- b. The Contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.
- c. The Contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in Volume 6, Chapter 4, Section 1, Subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The Contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The Contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program;

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include; employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The Contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (herein after referred to as the EEO Officer) who will have the responsibility for an must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.*

- a. All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum;
  - (1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the Contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

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- (2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the Contractor.
  - (3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Contractor's procedures for locating and hiring minority group employees.
- b. In order to make the Contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Contractor will take the following actions:
- (1) Notices and posters setting forth the Contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
  - (2) The Contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
5. *Recruitment.*
- a. When advertising for employees, the Contractor will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
  - b. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the Contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.
- In the event the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- c. The Contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:
- a. The Contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

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**AFFIRMATIVE ACTION REQUIREMENTS  
EQUAL EMPLOYMENT OPPORTUNITY**

- b. The Contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his avenues of appeal.

**7. Training and Promotion.**

- a. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
- c. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

**8. Unions.** If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The Contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.
- c. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

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**December 8, 2005**  
**DISADVANTAGED BUSINESS ENTERPRISE**  
**DEFINITIONS AND REQUIREMENTS**

***NOTICE***

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions regarding its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies that use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

**INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:**

Use this standard special provision on all projects advertised on or after January 5, 2006. Do not use on projects advertised prior to this date.

(a) *Definitions and Procedures*

For this project, the following terms are defined:

1. Disadvantaged Business Enterprise (DBE). A small business concern that is certified as being:
  - A. At least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
  - B. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
  - C. Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
    - (1) Any individual whom the Colorado Department of Transportation Office of Certification or the City and County of Denver Division of Small Business Opportunity (DSBO) finds to be a socially and economically disadvantaged individual.
    - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
      - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
      - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
      - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
      - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
      - e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
      - f. "Women", which means females of any ethnicity;



- g. “Other,” which means any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective and/or individuals who have been determined to be socially and economically disadvantaged based on the criteria for social and economic disadvantage.
- 2. Underutilized DBE (UDBE). A firm which meets the definition of DBE above and is eligible to meet the contract goal as defined in the project special provision titled “Contract Goal.”
- 3. DBE Joint Venture. Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A DBE joint venture must be certified as a joint venture by the Business Programs Office at CDOT.

- A. For those projects set-aside for bidding by UDBEs only; all of the partners in a joint venture must be UDBEs and certification of the joint venture will not be required.
  - B. For all projects other than the set-aside projects discussed in A. above; one of the partners in a joint venture must be a DBE. The DBE percentage of the joint venture will be determined at the time of certification.
- 4. Contract Goal. The goal for UDBE participation that the Department determines should appropriately be met by the successful bidder. Contract goal will be the percentage stated in the invitation for bids and in the project special provisions. Successful bidders that are awarded a Contract based on good faith efforts shall continue to make good faith efforts through the period of time that work on the project is in process, to provide for additional UDBE participation toward meeting the goal.
- 5. Good Faith Efforts. It is the obligation of the bidder to make good faith efforts to meet the contract goal prior to the bid opening. The bidder can demonstrate that it has done so either by meeting the contract goal or by documenting good faith efforts made. CDOT will evaluate only the good faith efforts made by the contractor prior to the bid opening. Any UDBE Participation submitted on Form 715 that exceeds the participation submitted on Form 714 will be accepted as additional UDBE participation, but will not be counted as Good Faith Efforts and will not exempt a contractor from fulfilling the Good Faith Efforts requirements. The apparent low bidder shall report all efforts made including but not limited to the efforts required on Form 718. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain UDBE participation sufficient to meet the DBE

contract goal. In determining whether a bidder has made good faith efforts, CDOT may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, CDOT may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average UDBE participation obtained by other bidders, CDOT may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

The Business Programs Office, with the DBE Liaison's Approval, will notify the apparent low bidder by fax regarding any deficiencies in the documentation and effort demonstrated by the bidder. This fax will include the Business Programs Office's recommendation to the DBE Liaison Officer regarding whether the good faith effort demonstrated was sufficient for the bidder to be regarded as responsible. If the bidder may be regarded as responsible but with minor deficiencies in its good faith effort, the bidder will be expected to correct any deficiencies noted prior to bidding on other CDOT projects.

Within five working days of being informed by the Business Programs Office that it is not a responsible bidder because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration from the Good Faith Efforts (GFE) Committee, which will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. The bidder should make this request to:

Good Faith Efforts Committee  
Fax: 303-757-9019  
Phone: 303-757-9234

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts prior to the bid opening to do so. The bidder will also have the opportunity to meet in person with CDOT's GFE Committee to discuss the issue of whether it met the goal or made adequate good faith efforts prior to the bid opening to do so. The Business Programs Office, with the DBE Liaison's Approval, will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts prior to the bid opening to do so.

The GFE Review Committee will make a recommendation to the DBE Liaison Officer. The DBE Liaison Officer will review the good faith efforts documentation and the recommendation of the GFE Review Committee, determine whether the required efforts are sufficient for award and notify the Chief Engineer of this finding. The Chief Engineer will make the final decision regarding award. There will be no administrative appeal of the Chief Engineer's decision.

If award of the Contract is made based on the Contractor's good faith efforts, the goal will not be waived. The Contractor will be expected to continue to make good faith efforts as described below throughout the duration of the Contract.

To demonstrate Good Faith Efforts to meet the contract goal throughout the performance of the Contract, the Contractor shall document to the CDOT Region Civil Rights Professional the steps taken on Form 205. For each subcontract item not identified for DBE participation on Form 718, steps the Contractor must take include but are not limited to the following:

- A. Seek out and consider UDBEs as potential subcontractors.
  - (1) Contact all UDBEs for each category of work that is being subcontracted.
  - (2) Affirmatively solicit their interest, capability, and price quotations.
  - (3) Provide equal time for all prospective subcontractors to prepare their proposals.
  - (4) Provide at least as much time to UDBEs in assisting them to prepare their bids for subcontract work as to non UDBE subcontractors.
  - (5) Award subcontracts to UDBEs where their quotations are reasonably competitive with other quotations received.
  
- B. Maintain documentation of UDBEs contacted and their responses.
  - (1) Maintain a list of UDBEs contacted as prospective subcontractors.
  - (2) Maintain thorough documentation of criteria used to select each subcontractor.
  - (3) Where a UDBE expressed an interest in a subcontract and made a quotation, and where the work was not awarded to a UDBE, furnish a detailed letter explaining the reasons.

*(b) Certification as a DBE by the Department*

1. Any contractor may apply to the Colorado Department of Transportation Office of Certification or the City and County of Denver Division of Small Business Opportunity (DSBO) for status as a DBE. Application shall be made on the USDOT's Uniform Certification Application Form as provided by these agencies for certification of DBEs. Application need not be made in connection with a particular bid. Only work contracted to UDBE contractors or subcontracted to UDBEs and independently performed by UDBEs shall be considered toward contract goals as established elsewhere in these specifications.
2. It shall be the Contractor's responsibility to submit applications so that the certifying agency has sufficient time to render decisions. The certifying agency will review applications in a timely manner but is not committed to render decisions about a firm's DBE status within any given period of time.
3. The Department will publish an online directory of DBE contractors, vendors and suppliers for the purpose of providing a reference source to assist any bidder in identifying DBEs and UDBEs. Bidders will be solely responsible for verifying the Certification of DBEs they intend to use prior to submitting a proposal. The directory is updated daily by the certifying agencies and is accessible online at [http://www.dot.state.co.us/app\\_ucp/](http://www.dot.state.co.us/app_ucp/).
4. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.
5. Permission for a DBE/non-DBE joint venture to bid on a specific project may be obtained from the Business Programs Office based on information provided by the proposed joint venture on Form 893, "Information For Determining DBE Participation When A Joint

Venture Includes A DBE". Joint applications should be submitted well in advance of bid openings.

(c) *Bidding Requirements*

1. All bidders shall submit with their proposals a fully executed Form 714 including a list of the names of their UDBE subcontractors to meet the contract goal. The apparent low bidder shall submit a fully executed Form 715 for each UDBE used to meet the contract goal (sample attached) no later than 4:00 p.m. on the third work day after the date of bid opening to the Business Programs Office in the Center for Equal Opportunity. Form 715 may be submitted by FAX, at Fax number (303)757-9019, with an original copy to follow. If the contract goal is not met, the apparent low bidder shall submit a completed Form 718 and corresponding evidence of good faith efforts no later than 4:00 on the day following the bid opening to the Business Programs Office in the Center for Equal Opportunity. CDOT Form No. 718 may be submitted by FAX, at Fax number (303)757-9019, with an original copy to follow. A copy of Form 718 is incorporated into this specification.
2. The award of Contract, if awarded, will be made to the lowest responsible bidder that will meet or exceed the contract goal or, if the goal will not be met, is able to demonstrate that good faith efforts were made to meet the goal. Good faith efforts are explained in (a) of this special provision.
3. The use of the UDBE firms named on Form 714 or on a Form 715, for the items of work described, is a condition of award. The replacement of a named UDBE firm will be allowed only as provided for in (e) of this special provision. Failure to comply will constitute grounds for default and termination of the Contract.
4. Contractor's DBE Obligation. The prime Contractor bidding on construction projects advertised by the Department agrees to ensure that Disadvantaged Business Enterprises (DBEs), as defined in this special provision, have equal opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with Federal or State funds. The prime Contractor shall not discriminate on the basis of race, color, national origin, or sex in the bidding process or the performance of contracts.

To ensure that UDBEs are offered equal opportunity to participate in the performance of contracts, it is the responsibility of the prime Contractor to offer and to provide assistance to UDBEs related to the UDBE performance of the subcontract. However, the UDBE must independently perform a commercially useful function on the project.

(d) *Counting DBE Participation Toward Contract Goals and CDOT's annual DBE goal*

1. Once a firm has been certified as a DBE the total dollar amount of the contract awarded to the firm shall be counted toward CDOT's annual DBE goal and the contract goal as explained below, and as modified for the project in the project special provisions titled "Contract Goal."
2. The actual dollar total of a proposed subcontract, supply or service contract with any DBE firm shall be reported to the Department using Form 713. A Form 713 for subcontracts is to be submitted with the Form 205 and receipt will be a condition of approval. The eligibility of a proposed DBE subcontractor will be finally established based on the firm's status at the time of Form 205 approval.

A Form 713 for a supply or service contract is to be submitted once a contract has been fully executed so the Department will be able to report the DBE participation in a timely manner. The eligibility of a DBE supplier or service firm will be finally established as of the date the Form 713 is received by the Department. A Form 205 is not required for a supply or service contract.

If a firm becomes certified as a DBE during performance under a fully executed contract with CDOT but prior to the DBE performing any work, then 100 percent of the work performed by the firm under that contract may be claimed as eligible work.

3. The Contractor may count toward its contract goal the percentage of the total dollar amount of a contract with a Department certified joint venture that equals the percentage of the ownership and control of the UDBE partner in a joint venture.
4. A. The Contractor may count toward its contract goal only that percentage of expenditures to UDBEs which independently perform a commercially useful function in the work of a contract. A DBE is considered to be performing a commercially useful function by actually performing, managing, and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, work performed solely by the DBE, industry practices, and other relevant factors.

B. A DBE may enter into subcontracts consistent with normal industry practices. 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 of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department.

5. The Contractor may count toward its contract goal the percentage of expenditures for transportation services obtained from UDBE trucking firms, provided the UDBE controls the trucking operations for which it seeks credit. A UDBE trucking firm must have at least one truck and driver of its own, but it can lease trucks owned by others, both DBEs and non-DBEs, including owner-operators. For work done with its own trucks and drivers, and for work done with DBE lessees, the UDBE trucking firm receives credit for all transportation services provided. For work done with non-DBE lessees, the UDBE trucking firm gets credit only for the fees or commissions it receives for arranging the transportation services, because the services themselves are being performed by non-DBEs.
6. The Contractor may count toward its contract goal the percentage of expenditures for materials and supplies obtained from UDBE suppliers (regular dealers) and manufacturers, provided that the UDBEs assume the actual and contractual responsibility for and actually provide the materials and supplies.
  - A. The Contractor may count 100 percent of its expenditures to a UDBE manufacturer. A DBE manufacturer is a certified firm that operates or maintains a factory or

establishment that produces on the premises the materials or supplies obtained by the Contractor.

- B. The Contractor may count 60 percent of its expenditures to UDBE suppliers (regular dealers) that are not manufacturers, provided that the DBE supplier performs a commercially useful function in the supply process. A DBE supplier (regular dealer) is a certified firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a supplier (regular dealer) the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A supplier in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or suppliers within the meaning of this section.
  
- C. The Contractor may count toward its contract goal the following expenditures to UDBE firms that are not manufacturers or suppliers (regular dealers):
  - (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (2) The fees charged for delivery of materials and supplies required to a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a supplier of the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  
- 7. To determine the goals achieved under this Contract the participation as described in (d) of this special provision shall be divided by the original prime Contract amount and multiplied by 100 to determine the percentage of performance. The Contractor shall maintain records of payment that show amounts paid to all DBEs. Upon completion of the project, the Contractor shall submit a Form 17 listing all DBEs that participated in this Contract, the subcontract tier number of each, and the dollar amount paid to each. This dollar amount shall include payments made by nonDBE subcontractors to DBE subcontractors. The Contractor shall certify the amount paid, which may be audited by the Department. When there is no participation by DBEs, the Contractor shall submit a Form 17 that indicates no participation and gives reasons why there was no participation. CDOT will not count the participation of a DBE subcontractor toward the prime

contractor's UDBE achievements or CDOT's overall DBE goal until the amount being counted toward the goal has been paid to the DBE.

(e) *Replacement of UDBE Subcontractors used to meet the contract goal*

Based upon a showing of good cause the Contractor may request that a UDBE named on Form 714 or on a Form 715 be replaced with another UDBE pursuant to the terms and conditions of this special provision. In the event that the Contractor is able to both document the need and to offer a replacement UDBE who can perform the work at a reasonable cost, the CDOT Region Civil Rights Professional will approve the replacement at no additional cost to the Department. Replacements will be allowed only with prior written approval of the Region Civil Rights Professional.

1. If a replacement is to be requested prior to the time that the named UDBE has begun to effectively prosecute the work under a fully executed subcontract, the Contractor shall furnish to the Region Civil Rights Professional the following:
  - A. Written permission of the named UDBE. Written permission may be waived only if such permission cannot be obtained for reasons beyond the control of the Contractor.
  - B. A full written disclosure of the circumstances making it impossible for the Contractor to comply with the condition of award.
  - C. Documentation of the Contractor's assistance to the UDBE named on Form 714 or on Form 715.
  - D. Copies of any pertinent correspondence and documented verbal communications between the Contractor and the named UDBE.
  - E. Documentation of the Good Faith Efforts in finding a replacement UDBE subcontractor and the results of the efforts. It is within the control of the Contractor to locate, prior to award, DBEs that offer reasonable prices and that could reasonably be expected to perform the work. For this reason, increased cost shall not, by itself, be considered sufficient reason for not providing an in-kind replacement.
2. In the event a UDBE subcontractor begins to prosecute the work and is unable to satisfactorily complete performance of the work, the Contractor shall furnish to the Region Civil Rights Professional the following:
  - A. Documentation that the subject UDBE subcontractor did not perform in a satisfactory manner.
  - B. Documentation of the Contractor's assistance to the UDBE subcontractor prior to finding the UDBE subcontractor in default.
  - C. A copy of the certified letter finding the UDBE to be in default or a letter from the UDBE stating that it cannot complete the work and it is turning the work back to the Contractor.

- D. Copy of the contract between the Contractor and the UDBE subcontractor, plus any modifications thereto.
- E. Documentation of the Good Faith Efforts in finding a replacement UDBE subcontractor and the results of the efforts.

In the event the Contractor is able to locate a replacement UDBE who can perform work at a reasonable cost to the Contractor, and also demonstrates to the satisfaction of the Department that prior to bid it had reason to believe that the named UDBE firm was responsible and not expected to default, the Department may modify or renegotiate the Contract to compensate the Contractor for any reasonable extra costs, because of a higher price in the proposal of the replacement UDBE subcontractor than that of the original UDBE subcontractor who failed to perform.

Provided, however, that the Department will not be obligated to participate in any increased cost to the Contractor if the UDBE that fails to perform has a recent history of performance failure or default that was either known, or should have been known, to the Contractor prior to award.

- 3. If the Contractor is unable to locate a UDBE replacement that is both interested in and capable of performing the work at a reasonable cost, the Department may waive the requirement that the work be performed by a UDBE and the Contractor shall provide for the satisfactory completion of the work at no additional cost to the Department.

*(f) Sanctions.*

It is the obligation of the Contractor to provide DBE firms with equal opportunity to participate in the performance of the work.

It is the responsibility of DBE firms to perform their work in a responsible manner fully consistent with the intent of the DBE program, and in substantial compliance with the terms and conditions of these DBE definitions and requirements.

DBE firms which fail to perform a commercially useful function as described in subsection (d) of these DBE definitions and requirements or operate in a manner which is not consistent with the intent of the DBE program may be subject to revocation of certification.

A finding by the Department that the Contractor has failed to comply with the terms and conditions of these DBE definitions and requirements shall constitute sufficient grounds for default and termination of the Contract in accordance with subsection 108.09 of the specifications.

Attachments:

- Form 714
- Form 715
- Form 718



**Attachment 9**

**March 15, 2002**

**EMERGING SMALL BUSINESS PROGRAM  
NOTICE**

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

**Instructions for use on CDOT construction projects:**

Use this standard special provision on CDOT projects, both federal aid and non-federal aid, but not on projects that are wholly or partially funded with local agency funds.

## EMERGING SMALL BUSINESS PROGRAM

### DESCRIPTION

This standard special provision describes the Emerging Small Business (ESB) Program that is included in the Contract. The program is further described by the ESB Program Rules. Anyone who has questions about the Program should contact the ESB Program Manager at (303) 757-9162 or 1-800-925-3427. Mail should be directed to the ESB Program Manager at the Colorado Department of Transportation (CDOT), Business Programs Office, 4201 East Arkansas Avenue, Denver CO 80222. ESB information is also available on CDOT's website: [www.dot.state.co.us/EEO/ESBProgramPage.htm](http://www.dot.state.co.us/EEO/ESBProgramPage.htm)

### GENERAL REQUIREMENTS - CONSTRUCTION CONTRACT OBLIGATIONS

**(a) Definition and Eligibility.** An Emerging Small Business (ESB) is a business which the Colorado Department of Transportation has determined meets the eligibility criteria and requirements of the ESB Rules, as follows:

- 1. Eligibility Requirements.** The business must submit to CDOT, in its application, proof of either:
  - A. Completion, by a principal of the business, of a minimum of 6 hours of class or seminar instruction within the last two years on subjects applicable to a small business, including topics such as planning, marketing, and finance; or
  - B. Completion, by a principal of the business, of the U. S. Small Business Administration "Small Business Workshop" training course, or of any similar course that has been previously identified by the ESB Program Manager as equivalent thereto and that is available from a local source.

There is no minimum time the business must have been in operation before applying for ESB status.

The business must have all necessary licenses, permits and registrations to do business in the State of Colorado.

The business must be an independent business.

A construction business must not have exceeded a total gross annual income of \$4,500,000 averaged over the past three fiscal years. A consultant business must not have exceeded a total gross annual income of \$2,000,000 averaged over the past three fiscal years.

## EMERGING SMALL BUSINESS PROGRAM

The business must commit in writing to complete a Business Development Plan during each year of ESB eligibility.

Each business in the ESB Program shall file an application with CDOT to renew its eligibility annually. The maximum term of the eligibility of a business in the ESB Program is a period of twelve active eligible years.

- 2. Determination of Eligibility as ESB by CDOT.** Any contractor may apply to the ESB Program Manager for status as an ESB. Application need not be made in connection with a particular bid.

It shall be the business' responsibility to submit applications so that the ESB Program Manager has sufficient time to render decisions. The ESB Program Manager will review applications in a timely manner but is not committed to render decisions about a business' ESB status within any given period of time. Applications can be obtained from CDOT's website or by contacting the ESB Program Manager. The ESB Program Manager will maintain and make available a Directory of eligible ESB contractors and consultants. Bidders will be solely responsible for verifying the eligibility of ESBs they intend to use prior to submitting a proposal. Verification can be made by calling the ESB Program Manager.

- (b) Reimbursement Payments.** Only one of the following two types of reimbursement payments may be made to the Contractor per ESB subcontractor.

- 1. First-Time Reimbursement Payment.** The ESB Program Manager will authorize reimbursement payment to the Contractor if a retained ESB has never before had a contract or a subcontract on a CDOT project. Payment is earned only one time per project, regardless of how many ESBs are retained as subcontractors on the project. Payment will be 10 percent of the dollar value of work performed by the ESB subcontractor on the project. Payment shall not exceed a maximum amount of \$5,000.

CDOT Form No. 977 (copy attached) describes the terms and conditions for receiving this payment. This form must be submitted with CDOT Form No. 205 to the Project Engineer.

CDOT Form No. 980 (copy attached) evaluating the ESB firm's performance shall be submitted to the project engineer upon completion of the subcontract work or every six months that the ESB is actively working on the project, if subcontract exceeds 6 months. Request for payment may be submitted when the subcontractor has completed work on the

EMERGING SMALL BUSINESS PROGRAM

project and payment will be based on the final subcontract amounts. Request for payment shall be submitted with CDOT Form No. 981 (copy attached) directly to the ESB Program Manager.

- 2. Hourly Reimbursement Payment.** The Department will provide hourly reimbursement to the Contractor if it retains one or more ESBs as subcontractors on the project. Payment is based upon the number of hours spent by the Contractor providing work-related services to the ESBs on the project, multiplied by the rate of pay listed below. Payment for each ESB assisted shall not exceed 10% of the ESB's subcontract, and the total shall not exceed \$7,500 per project. The Contractor shall submit a completed CDOT Form No. 978 (copy attached), which documents the specific assistance that was provided to the ESB subcontractor, with the CDOT Form 980 (copy attached) and a signed invoice which documents the number of hours of work-related services provided to the ESB to the Project Engineer for inclusion with the monthly pay estimate. The following wages will be paid per hour:

- Project Superintendent                    \$34.90
- Foreman                                        \$23.95
- General Office Help                        \$18.40
- Estimator or Project Scheduler        \$28.45

Loading and fringe benefits are included in these rates

- (c) Assistance with Bonding.** Bonding assistance shall not exceed the maximum amount of \$5,000 per duration of time in the program for ESB prime contract awards and \$5,000 per duration of time in the program for ESB subcontract awards where bonding is required by CDOT or the prime contractor.

1. Where the ESB is the Prime Contractor, CDOT will pay a certain percentage of the cost of the bond obtained by the ESB Prime Contractor as specified in the ESB's Business Development Plan negotiated with ESB Program Manager. The total amount paid to any specific ESB for this purpose on all CDOT projects shall not exceed \$5,000 per duration of time the ESB is in the program.. The ESB Prime Contractor shall submit a billing requesting payment and proof that the bond has been paid to the ESB Program Manager. If the ESB has never had a CDOT contract, a W-9 (Request for Taxpayer Identification Number (TIN) Verification), shall be submitted to the ESB Program Manager. An ESB Prime Contractor may only apply for one type of reimbursement payment per project.

EMERGING SMALL BUSINESS PROGRAM

2. If an ESB subcontractor is able to obtain bonding required by the Contractor, CDOT will pay a certain percentage of the cost of the bond obtained by the ESB subcontractor, as defined in the ESB's Business Development Plan negotiated with ESB Program Manager, provided that the total amount paid to any specific ESB for this purpose on all CDOT projects shall not exceed \$5,000 per duration of time the ESB is in the program. The Prime Contractor shall submit CDOT Form No. 979 (copy attached) to the ESB Program Manager. The ESB subcontractor must submit proof that bonding was required and proof that the bond has been paid to the ESB Program Manager. The Prime Contractor and the ESB subcontractor shall each submit a W-9, to the ESB Program Manager.
3. If an ESB subcontractor is unable to obtain bonding required by the Contractor and if the Contractor agrees to waive its bonding requirements for the ESB subcontractor, CDOT will provide assistance to the ESB subcontractor by reimbursing the prime contractor up to 5 percent of the ESB's subcontractor award to a maximum of \$5,000 for costs incurred which result from the ESB subcontractor's failure to perform.

Attachments:

CDOT Form Nos. [977](#) [978](#) [979](#) [980](#) [981](#)

April 12, 2007

**ATTACHMENT 10**

**ON THE JOB TRAINING**

**NOTICE**

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions regarding its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies that use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

**INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:**

Use this standard special provision on all projects.

This training special provision supplements subparagraph 6 of paragraph B and supersedes subparagraph 7b of paragraph C of the Special Provision entitled "Affirmative Action Requirements, Equal Employment Opportunity" and is an implementation of 23 U.S.C. 140 (a).

As part of the Contractor's Equal Employment Opportunity Affirmative Action Program, training shall be provided on projects as follows:

*(a) General Requirements*

1. The Contractor shall provide on the job training aimed at developing full journey workers in the type of skilled craft involved.
2. Training and upgrading of minorities and women toward journey worker status are a primary objective of this specification. Accordingly, the Contractor shall make every reasonable effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps that were taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this specification. This training commitment shall not be used to discriminate against any applicant for training whether a member of a protected class or not.
3. An employee shall not be employed or utilized as a trainee in any skilled craft in which the employee has successfully completed a training course leading to journey worker status or in which the employee has been employed as a journey worker on a permanent and regular basis. The intent of the OJT Program is to train unskilled workers into a skilled job; the intent is not to use a previously trained and skilled worker to meet the project training requirements. The Contractor shall satisfy this requirement by including appropriate questions (i.e. Have you ever completed a formal training class in the craft that you are working in? worked as a journeyman in the highway construction industry?) in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

In order to enhance promotion from within the Contractor's unskilled workforce, the Contractor may utilize an unskilled worker as a journey worker in a skilled craft, provided that the worker is paid the required contract journey worker rate. In that event, the trainee will have an opportunity to advance to journey worker status in and/or outside of the OJT program.

4. The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor and approved by the Department and the Colorado Division of the Federal Highway Administration (FHWA), or the U. S Department of Labor (DOL), Bureau of Apprenticeship and Training (BAT). The Department and the FHWA will approve a program if it is reasonably calculated to meet the Equal Employment obligations of the Contractor and to qualify the average trainee for journey worker status in the skilled craft concerned by the end of the training period. Apprenticeship and training programs will be accepted if registered with the U.S. Dept. of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau. To obtain FHWA approval, the Contractor's training program will be reviewed by the CDOT Center for Equal Opportunity and approved by the Colorado Division of the FHWA. The Contractor shall allow up to 30 days for FHWA review. The proposed training program shall be submitted by the Contractor to:

CDOT Center for Equal Opportunity  
4201 East Arkansas Avenue  
Denver, CO 80222

The following documentation shall be submitted:

- A. Evidence of an approved training program.
  - B. A copy of the current applicable approved training program, including a copy of the applicable ratios of trainees/apprentices to journey worker for a project.
5. Approved training programs shall provide the trainee with a minimum of 2000 hours of training which includes a minimum of 40 hours of classroom training. Credit for prior classroom or other training may be allowed if such training is relevant to the trainees' current training program requirements.
  6. Training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. There will be no reimbursement for offsite training.
  7. The Contractor shall pay the training program wage rates and the correct fringe benefits to each registered trainee employed on the contract work and currently enrolled in an approved program. The wage rate and fringe benefit rates will correspond with the applicable minimum wage decision for the project. The minimum trainee wage shall be no less than the wage for the Guardrail Laborer classification as indicated in the appropriate Davis Bacon wage decision. However, if the trainee is in a BAT approved training program, the wage rate should be as described in the current apprenticeship program.



8. All apprentices or trainees that are used to meet the OJT goal and/or for whom the Contractor shall request reimbursement must first be approved by the CDOT Regional Civil Rights Manager before commencing work on the project. The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees. Approval for the apprentice or trainee to begin work on a CDOT project will be based on information from the items listed below, and any additional criteria identified by CDOT in other parts of this specification.
  - A. Evidence of the registration of the trainee or apprentice into the approved training program as submitted by the Contractor or sponsor to the CDOT Center for Equal Opportunity.
  - B. The completed Form 838 for each trainee or apprentice as submitted to the Engineer.
9. Within the first 100 hours of training time completed, the Contractor shall provide each trainee with a review of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, and company policies and complaint procedure. The Contractor shall also furnish the trainee a copy of the approved training program.
10. On a monthly basis, the Contractor shall provide to the Engineer a completed On the Job Training Progress Report (Form 832) for each approved trainee or apprentice on the project. The Form 832 will be reviewed and approved by the CDOT Regional Civil Rights Manager before reimbursement will be made. The Contractor will be reimbursed for each approved apprentice or trainee required by the Department and documented on Form 832, but not more than the OJT Force Account budget unless approved by the Engineer through a Change Order. Upon completion of training, transfer to another project, termination of the trainee or notification of final acceptance of the project, the Contractor shall submit to the Engineer a "final" completed Form 832 for each approved apprentice or trainee.
11. All forms referred to are available from the CDOT Center for Equal Opportunity, through the CDOT Regional Civil Rights Manager, or on CDOT's website at <http://www.dot.state.co.us/Bidding/BidForms.htm>.
12. The Engineer will provide reimbursement to the Contractor. Payment is based on the number of hours of on the job training the Contractor provides to the trainee under this Contract and the applicable reimbursement rate. Submission of the Form 832 will document the training hours provided during the month, and will be considered a request for payment. Where applicable, the Contractor shall note and explain

discrepancies between the hours documented on Form 832 and the corresponding certified payrolls. To receive payment, the Forms 838 and 832 shall be completed in full and the Contractor shall be in compliance with all requirements of this specification and the provisions of FHWA 1273.

13. Failure to provide the required training impedes the Department's federal mandate to bring women and minorities into the construction industry. Although precise damages to the program are difficult to calculate, they are, at a minimum, equivalent to the loss to the individuals who were the intended beneficiaries of the program. Therefore, where the Contractor fails to provide the required number of training hours and has failed to establish why the Contractor was unable to do so, the Contractor will be assessed an amount equal to the following damages to be deducted from the final progress payment:

A sum representing the number of training hours specified in the Contract, minus the number of training hours worked as certified on Form 832, multiplied by the journey worker hourly wages plus fringe benefits [(A hours – B hours worked) x (C dollar per hour + D fringe benefits)] = Damages Assessed. The journey worker scale is that for the skilled craft identified on the contract's wage decision document.

The Engineer will provide the Contractor with a written Default Notice during acceptance of the project informing the Contractor of the noncompliance with this specification, in accordance with subsection 108.09, which will include a calculation of the damages to be assessed.

*(b) Standard Training Program*

If the Contractor is not participating in the Department's Colorado Training Program, the training shall be provided according to the following in addition to the general requirements outlined above in part (a):

1. The number of training hours for the trainees to be employed on the project shall be as shown in the Contract. The trainees or apprentices employed under the Contract shall be registered with the Department using Form 838.
2. Subcontractor trainees who are enrolled in an approved Program may be used by the Contractor to satisfy the requirements of this specification.
3. At least ten working days prior to the first progress payment to be made after work has begun, the Contractor shall submit to the Engineer documentation showing DOL or FHWA approval of the Contractor's training program, a plan that identifies total training hours for each trainee,

and the construction phase for training each of the proposed trainees, including the duration, for this specific project.

Progress payments may be withheld until this plan is submitted and approved and may be withheld if the approved plan is not followed.

4. A trainee shall begin work on the project as soon as possible and shall be utilized in accordance with the applicable training program and as long as meaningful training opportunities exist. It is not required that all trainees be utilized on the project for the entire length of the Contract.
5. The Contractor will be reimbursed 80 cents per hour for each approved apprentice or trainee required by the Department.
6. In order to receive reimbursement, the Contractor shall provide on Form 832 the number of training hours specified in the OJT goal assigned to the project. Reimbursement will be made only for hours worked by an apprentice or trainee who has been approved by the Department to meet the OJT training requirement.
7. The OJT goal for the project will be included in the Project Special Provisions and will be determined by the Regional Civil Rights Manager after considering:
  - A. Availability of minorities, women, and disadvantaged for training;
  - B. The potential for effective training;
  - C. Duration of the Contract;
  - D. Dollar value of the Contract;
  - E. Total normal work force that the average bidder could be expected to use;
  - F. Geographic location;
  - G. Type of work; and
  - H. The need for additional journey workers in the area;
8. The guidelines for contract dollar value, minimum total training hours, and maximum reimbursement are as follows:

Category	Contract dollar value	Minimum total training hours to be provided on the project	Maximum reimbursement allowed
A	Up to 1 million	0	0
B	>1 - 2 million	320	\$600

C	>2 - 4 million	640	\$800
D	>4 - 6 million	1280	\$1400
E	>6 - 8 million	1600	\$1700
F	>8 - 12 million	1920	\$2000
G	>12 - 16 million	2240	\$2,400
H	>16 - 20 million	2560	\$2,600
I	For each increment of \$5 million, over \$20 million	1280	\$1400

9. The Contractor shall have fulfilled its responsibilities under this specification if the CDOT Regional Civil Rights Manager has determined that it has provided acceptable number of training hours specified in the Contract in accordance with this specification.

*(c) Colorado Training Program.*

If the Contractor has a current approved Colorado Training Program plan, the training shall be provided according to the following in addition to the general requirements outlined in part (a) above when applicable.

1. The Contractor shall comply with the requirements of the Department's procedures as defined in this specification.
2. If the Contractor has an approved Colorado Training Program, then it shall be exempted from the contract OJT goal, but not from the requirement to provide training in accordance with the Contractor's approved training plan. Contractors shall have an approved Colorado Training Program Plan for the calendar year to be able to use this option. Contractors who do not have an approved Colorado Training Program Plan shall comply with the requirements of part (b) of this specification.
3. Each trainee enrolled in the Colorado Training Program will receive a minimum of 1200 hours per year of on the job training. Up to 200 hours of offsite classroom training can be included in the 1200 hours minimum. The trainee's hours per year may be on CDOT or non-CDOT projects.
4. At least ten working days prior to the first progress payment to be made after work has begun, the Contractor shall submit to the Engineer documentation showing DOL or CDOT approval of the Contractor's training program and proof of good standing in the Colorado Training Program.

5. The Contractor will be reimbursed \$4.80 per hour for each approved apprentice or trainee required by the Department and documented on Form 832, but not more than the OJT Force Account budget unless approved by the Engineer by Change Order. Of the \$4.80 per hour reimbursed to the Contractor, any amount over \$0.80 per hour shall be forwarded by the Contractor to the trade or labor organization(s) or other CDOT-approved sponsor through which the Contractor obtains its trainees or apprentices (sponsor) and shall be spent for training and recruitment. The Department will not reimburse for classroom training or training provided on non-CDOT projects.

The Contractor shall make every effort to enroll minority and female trainees and apprentices from within the Contractor's workforce and from the community by recruiting through public and private sources likely to yield minority and women trainees to the extent which these recruits are available in the geographic area.

6. The Contractor will be considered in compliance with the requirements of the Colorado Training Program when the Contractor demonstrates to the Department that it has met the requirements described in this specification and the Contractor's approved Colorado Training Program Training Plan.
7. Contractors who are in compliance with the Colorado Training Program will receive hours credit for their trainees whether they work on a CDOT or a non-CDOT project. Contractors will be reimbursed by CDOT only for hours worked on CDOT projects.
8. The Contractor shall comply with the affirmative action requirements in their approved Colorado Training Program Plan.
9. The minimum required number of trainees to be employed by the Contractor shall be as shown in the Contractor's approved Colorado Training Program Plan.

To be entitled to participate in the Colorado Training Program, the Contractor agrees to a minimum trainee commitment based on the Contractor's average annual dollar amount of contracts with CDOT over the last three calendar years. One trainee is required for every four million dollars of contract work with the Department. Please refer to the following table for the number of trainees required.

<b>Three Year Average</b>	<b>Number of Trainees</b>
\$0.00 - \$3,999,999	0
\$4,000,000 - \$7,999,999	1
\$8,000,000 - \$11,999,999	2
\$12,000,000 - \$15,999,999	3
\$16,000,000 - \$19,999,999	4
\$20,000,000 - \$23,999,999	5
\$24,000,000 - \$27,999,999	6
\$28,000,000 - \$31,999,999	7
\$32,000,000 - \$35,999,999	8
\$36,000,000 - \$39,999,999	9
\$40,000,000 - \$43,999,999	10
Etc.	

A Contractor or their program sponsor may obtain its three year average by contacting the OJT Manager at the CDOT Center for Equal Opportunity, 303-757-9234.

- The Contractor shall have fulfilled its responsibilities described in this special provision if it has remained in compliance with the Colorado Training Program during the life of the Contract.

## Attachment 11

### SUMMARY OF TITLE VI STATUTES and EXECUTIVE ORDERS PROHIBITING DISCRIMINATION

- Title VI of the Civil Rights Act of 1964 – prohibits discrimination in federally funded programs on the basis of race, color, and national origin. (See 42 U.S.C. 2000d *et. seq*)
- Federal-Aid Highway Act of 1973 (23 U.S.C. 324) – amended Title VI to prohibit discrimination on basis of sex in Federal-aid highway programs.
- Title IX of the Education Amendments of 1972 – basically amended Title VI to prohibit sex discrimination in federally funded education programs.
- Section 504, Rehabilitation Act of 1973 – prohibits discrimination in federally funded programs on the basis of handicap/disability. (See 49 CFR 21)
- Age Discrimination Acts of 1975 – prohibits discrimination in federally funded programs on the basis of age.
- The Civil Rights Restoration Act of 1987 – Restored broad institution-wide coverage of non-discrimination statutes to all programs and activities of any Federal recipient; i.e., all of a federal recipient’s programs and activities are covered regardless of whether all or a portion of the recipients programs and activities are federally assisted or not. Applicable laws affected consisted of Title VI of the 1964 Civil Rights Act, Title IX of the 1972 Education Amendments, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973.
- Americans with Disabilities Act of 1990 (ADA) – prohibits discrimination in State and local government programs and activities regardless of whether those programs are federally funded or not.
- Title VIII of the 1968 Civil Rights Act – prohibits discrimination in the sale or rental of housing (applicable in the right-of-way and relocation phase of the Federal-aid Highway program) on the basis of race, color, religion, or national origin.
- Environmental Justice (Executive Order 12898) – Requires Federal agencies, to the greatest extent allowed by law, to administer and implement its programs, policies, and activities that affect human health or the environment so as to identify and avoid “disproportionately high and adverse” effects on minority and low-income populations.
- Limited English Proficiency (Executive Order 13166) – Requires Federal agencies to provide meaningful access to federally funded services and benefits for persons with limited English Proficiency and prohibits discrimination on basis of national origin.

## Attachment 12



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

Colorado Federal Aid Division

Mr. Thomas E. Norton  
Executive Director  
Colorado Department of Transportation  
4201 E. Arkansas Avenue  
Denver, Colorado 80222

Attention: Mr. Gene Trujillo, Internal EO Manager

Dear Mr. Norton:

SUBJECT: Delegation of Authority for Civil Rights Matters

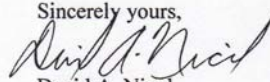
As a means of updating FHWA's Delegation of Authority to CDOT regarding civil rights matters, the Colorado Department of Transportation (CDOT) Headquarters EO Office, is hereby delegated the statewide responsibility and authority by the Federal Highway Administration under:

23 CFR Part 230 Subpart C, 23 CFR Part 200, 49 CFR 27.19,  
49 CFR Part 21, Part 24, Part 27, and Part 28,  
Section 504 of the Rehabilitation Act of 1973,  
Federal Aid Highway Act of 1973 Section 162(a)

This authority is provided to establish a civil rights unit to monitor, enforce and to report on statewide compliance efforts relative to civil rights and to implement affirmative and corrective action as needed and prescribed under the various relevant civil rights federal highway regulations as listed above and as proscribed in the FHWA guidance memorandum dated September 12, 1994.

We understand that this statement will be incorporated into all of CDOT's Civil Rights documents and other CDOT directives as deemed relevant by the Department.

Sincerely yours,

  
David A. Nicol  
Division Administrator



12300 W. Dakota Ave., Ste. 180  
Lakewood, CO 80228

March 2, 2005

In Reply Refer To:  
HDA-CO



## Attachment 13

Code of Federal Regulations  
Title 23, Volume 1  
Revised as of April 1, 2002]  
From the U.S. Government Printing Office via GPO Access  
**CITE: 23 CFR 200.9**

### TITLE 23--HIGHWAYS

#### CHAPTER I--FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

#### PART 200--TITLE VI PROGRAM AND RELATED STATUTES--IMPLEMENTATION AND REVIEW PROCEDURES--Table of Contents

#### Sec. 200.9 State highway agency responsibilities.

(a) State assurances in accordance with Title VI of the Civil Rights Act of 1964.

(1) Title 49, CFR part 21 (Department of Transportation Regulations for the implementation of Title VI of the Civil Rights Act of 1964) requires assurances from States that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Department of Transportation, including the Federal Highway Administration.

(2) Section 162a of the Federal-Aid Highway Act of 1973 (section 324, title 23 U.S.C.) requires that there be no discrimination on the ground of sex. The FHWA considers all assurances heretofore received to have been amended to include a prohibition against discrimination on the ground of sex. These assurances were signed by the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. The State highway agency shall submit a certification to the FHWA indicating that the requirements of section 162a of the Federal-Aid Highway Act of 1973 have been added to its assurances.

(3) The State highway agency shall take affirmative action to correct any deficiencies found by the FHWA within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with State-signed assurances and required guidelines. The head of the State highway agency shall be held responsible for implementing Title VI requirements.

(4) The State program area officials and Title VI Specialist shall conduct annual reviews of all pertinent program areas to determine the effectiveness of program area activities at all levels.

(b) State actions. (1) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the State highway agency. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

(2) Adequately staff the civil rights unit to effectively implement the State civil rights requirements.

(3) Develop procedures for prompt processing and disposition of

Title VI and Title VIII complaints received directly by the State and not by FHWA. Complaints shall be investigated by State civil rights personnel trained in compliance investigations. Identify each complainant by race, color, sex, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition; and other pertinent information. Each recipient (State) processing Title VI complaints shall be required to maintain a similar log. A copy of the complaint, together with a copy of the State's report of investigation, shall be forwarded to the FHWA division office within 60 days of the date the complaint was received by the State.

(4) Develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in, and beneficiaries of State highway programs, i.e., relocatees, impacted citizens and affected communities.

(5) Develop a program to conduct Title VI reviews of program areas.

(6) Conduct annual reviews of special emphasis program areas to determine the effectiveness or program area activities at all levels.

(7) Conduct Title VI reviews of cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.

(8) Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.

(9) The State highway agency Title VI designee shall be responsible for conducting training programs on Title VI and related statutes for State program and civil rights officials.

(10) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

(11) Beginning October 1, 1976, each State highway agency shall annually submit an updated Title VI implementing plan to the Regional Federal Highway Administrator for approval or disapproval.

(12) Develop Title VI information for dissemination to the general public and, where appropriate, in languages other than English.

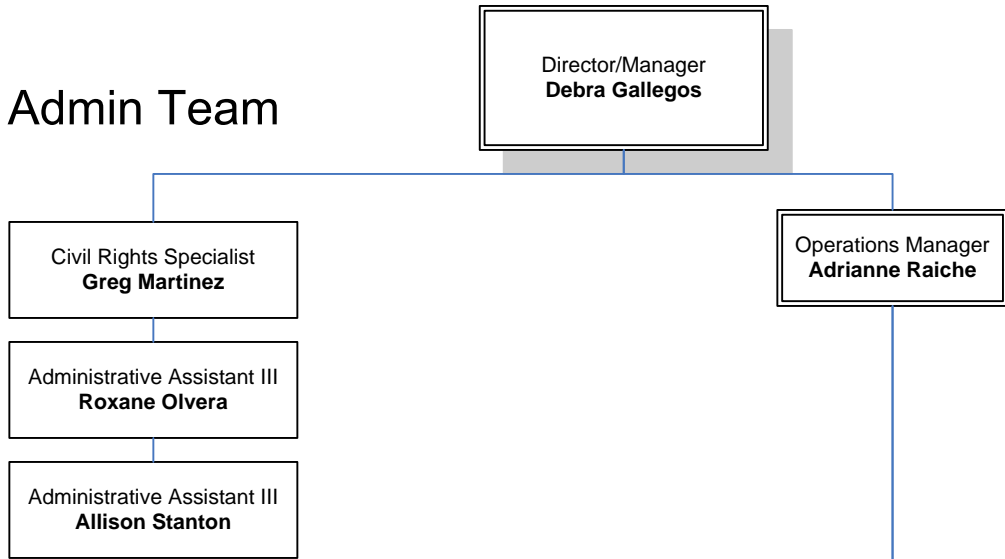
(13) Establishing procedures for pre-grant and post grant approval reviews of State programs and applicants for compliance with Title VI requirements; i.e., highway location, design and relocation, and persons seeking contracts with the State.

(14) Establish procedures to identify and eliminate discrimination when found to exist.

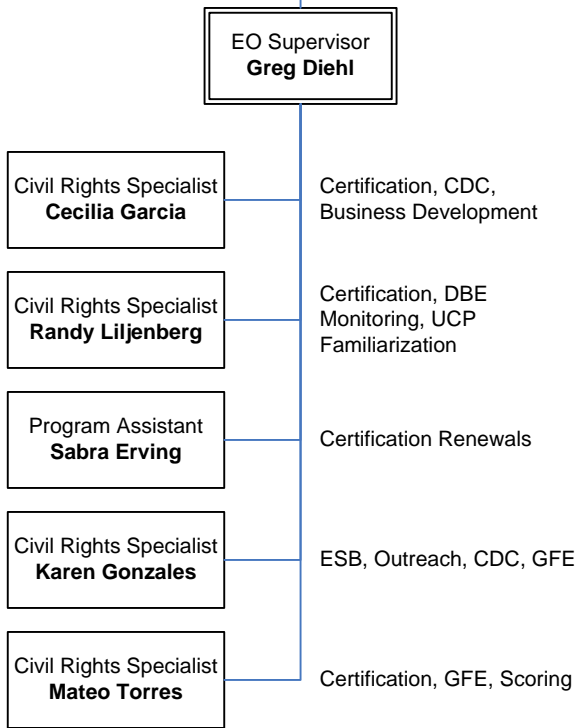
(15) Establishing procedures for promptly resolving deficiency status and reducing to writing the remedial action agreed to be necessary, all within a period not to exceed 90 days.

**Attachment 14**

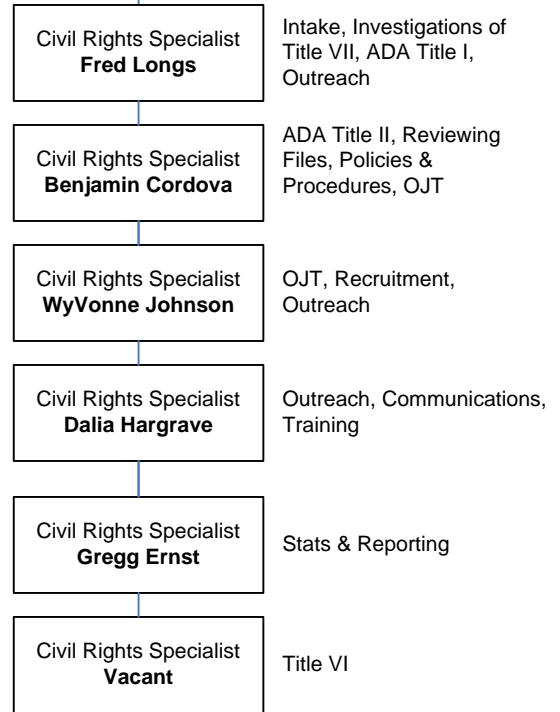
**Admin Team**



**Business Team**



**Employment & Access Team**



**Attachment 15**  
**Stewardship Agreement FHWA/CDOT:**  
**Excerpts from Section 3.12, Civil Rights**

**Introduction**

The Civil Rights program is responsible for all activities relating to civil rights in CDOT and at the national level including Title VI.

**Method of Operation**

The Civil Rights programs are non-exempt under SAFETEA-LU; therefore, FHWA oversight continues. The Civil Rights Stewardship Agreement takes a Quality Control and Quality Assurance approach, which relies on joint FHWA/CDOT team reviews of program activities to accomplish oversight of the program. The plan shifts federal oversight from a project-by-project basis to a program level basis. Staff from CDOT's Center for Equal Opportunity (the Center) work in partnership with each Regional Civil Rights Manager and with the FHWA Civil Rights Specialist to review, evaluate, and improve the CDOT's Civil Rights Programs.

Civil rights guarantees and programs are an integral part of all aspects of CDOT's on-going activities. The partnership between CDOT and FHWA continues to be an important part of ensuring compliance with the letter and spirit of laws and regulations. The Civil Rights Managers in each CDOT region will immediately advise CDOT's Center for Equal Opportunity to coordinate a plan of action on all Civil Rights issues not directly routed through the CDOT EO office.

The primary Title VI products of CDOT's Center for Equal Opportunity and Regional Civil Rights Offices are:

- Assurance that CDOT and its contractors are in compliance with all Civil Rights laws, regulations and directives, [including Title VI] and
- Instruction, advice, technical assistance, and statistical/program monitoring in support of CDOT's Civil Rights Programs

**Measures of Equality**

Initial measures of quality in the Civil Rights programs include:

- Achievement toward parity by underutilized groups (as defined in CDOT statistical reports) in contracting;
- Achievement toward overall, annual DBE goal;
- Numbers of DBEs receiving technical assistance, becoming prime contractors, and graduating from the program;
- Achievement toward overall, annual OJT goal;
- Numbers of trainees retained in positions after project completion;
- Numbers of discrimination complaints received and resolved;
- Numbers of contract compliance reviews completed;
- Findings from Focus Groups and Customer surveys (Internal & External).

Regional Civil Rights Managers are responsible for quality control in Civil Rights programs at the project and regional level. Regional Civil Rights Managers set project specific DBE and OJT goals, conduct regional contract compliance reviews, ensure regional compliance with Civil Rights laws and regulations, investigate discrimination complaints in the region, and cooperate with the Center for Equal Opportunity to develop appropriate outreach activities.

Quality control is documented by various detail and summary reports made to the FHWA and Transportation Commission. In addition a Quality Assurance Review (QAR) Program is cooperatively conducted by FHWA and the Center with assistance from Staff Services and the Regions. Annually, in coordination with the Quality Improvement Council (QIC) and FHWA, the Center staff identifies program emphasis areas to review. The QAR team submits reports and makes recommendations for improving the program to the QIC. The frequency of these reviews is negotiated and agreed on by FHWA, the Center, and the QIC.

The Title VI program is documented through CDOT's Title VI Assessment and Implementation Plan that is updated annually. The CDOT web page provides information about CDOT's Title VI Program to internal and external customers.

**Attachment 16**



U. S .Department  
Of Transportation  
**Federal Highway  
Administration**

**Colorado Federal Aid Division**  
555 Zang Street, Room 250  
Lakewood, CO 80228-1040

September 20, 2002

File: 930

Mr. Thomas E. Norton  
Executive Director  
Colorado Department of Transportation  
420 1 E. Arkansas Avenue  
Denver, Colorado 80222

In Reply Refer To: HDA-CO

Dear Mr. Norton:

**SUBJECT: Official Point of Contact for CDOT External Civil Rights Issues**

The question has been raised as to the official process in handling the Colorado Department of Transportation (CDOT) external civil rights actions that are submitted to the Federal Highway Administration (FHWA) for formal review and final determination. External civil rights issues include Title VI, Title II of the ADA Rehabilitation Act, and the Relocation Act.

In the past we have encouraged and continue to encourage informal dialogue between CDOT Regions and other internal Headquarters sections and FHW A regarding civil rights matters. However, due to the highly personal and legally sensitive nature of civil rights especially regarding Title VI and Title II ADA issues, we believe it is in the best interest of CDOT, FHW A and the general public that consistency be maintained in the interpretation of Civil Rights law, Federal Regulations and decision making. To achieve this, and assure compliance with 23 CFR 200.9 (b), it is essential that all formal CDOT civil rights actions initiated at the Regional levels and other headquarters interdepartmental levels, be submitted through a single CDOT headquarters office or designated liaison for final review prior to being submitted to FHW A. We presume that this designated headquarters office or liaison would be the Center for Equal Opportunity.

We will continue to welcome any and all informal queries, discussion and requests for technical assistance from the Regions and other various sections within CDOT. We believe continuous

and open dialogue directly with the Regions and other interdepartmental sections is very useful as it helps to expedite matters and clarify specific issues in the decision making process.

If you have any questions or concerns please call; Mr. Joseph Duran at (303) 969-6730, Ext.385.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Joseph Duran".

*For* William C. Jones  
Division Administrator

cc: Mr. Willie Harris, Civil Rights Specialist Team Leader  
Ms. Celina Benavidez, Director for Human Resources & Administration, CDOT  
Ms. Debra Gallegos, Manager EO, CDOT

**Attachment 17**

<b>COLORADO DEPARTMENT OF TRANSPORTATION</b>		<b>POLICY DIRECTIVE</b> ⊕ <b>PROCEDURAL DIRECTIVE</b>
Subject NON-DISCRIMINATION IN FEDERALLY FUNDED PROGRAMS POLICY		Number <b>604.0</b>
Supersedes <b>07/01/04</b>	Effective <b>03/17/92</b>	Originating Office CENTER FOR EQUAL OPPORTUNITY

**Purpose:**

1. To ensure that no person shall, on the ground of race, color, national origin, sex, handicap or age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Colorado Department of Transportation program or activity; and
2. To provide a policy that will standardize non-discrimination requirements in federally funded programs by assuring uniform application and effective implementation of the provision of the applicable federal Civil Rights legislation.

**Authority:**

Title VI of the 1964 Civil Rights Act, the Federal Aid in Highway Act, sec. 162(a), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, sec. 504, and Executive Order 12898.

**Applicability:**

This directive shall apply to all employees of the Colorado Department of Transportation and all divisions thereof and all external employees or agents including consultants and contractors.

**Policy:**

It is the policy of the Colorado Department of Transportation (CDOT) to ensure that the most fundamental principles of equality of opportunity and human dignity are upheld and that all decisions involving our employees, contractors and consultants and the traveling public are based on individual merit. It is the policy of CDOT to ensure that all its programs, policies and activities do not have the effect of excluding persons from participation in, denying the benefits of, or subjecting person to discrimination due to race, color, national origin, sex, handicap or age. It is the responsibility of every person within CDOT and all CDOT external agents to incorporate and implement actions consistent with non-discrimination in programs.

**Background:**

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color and national origin in federally assisted programs. Parallel statutes likewise forbid sex, age and handicap discrimination by recipients of federal funds. CDOT is a recipient of federal funds and as such it, as well as all of its responsible agents, contractors and consultants, is



Subject	Number
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required to assure such non-discrimination.<sup>1</sup> This prohibition against discrimination applies to all phases, activities and programs of CDOT when any part of CDOT receives federal assistance regardless of whether that particular program or activity is directly federally funded or assisted.<sup>2</sup> This prohibition against discrimination applies not only to activities and programs provided directly by CDOT through its staff and resources, but also to activities and programs funded totally or in part by CDOT through contracts or other funding relationships or assistance. Due to its broad scope and applicability both civil rights and program personnel are involved in assuring that the proscribed discrimination does not occur.

Discrimination in federally funded programs and activities need not be intentional. Seemingly neutral acts that have the effect of foreclosing\* CDOT services, benefits or programs on the basis of prohibited discrimination are likewise illegal. In addition, CDOT prohibits retaliation against any employee, contractor or consultant because he or she has made a report of alleged discrimination under this policy or has testified, assisted or participated in any manner in an investigation of such report, or has opposed such discrimination.

Federal legislation and implementing regulations require establishment of a Civil Rights Unit and designation of a Coordinator to coordinate its non-discrimination assurances, investigate and promptly dispose of discrimination complaints received directly by the State and conduct non-discrimination reviews of program areas for continuing compliance and prepare other required reports. The Executive Director has fulfilled this statutory requirement by establishing the Center for Equal Opportunity and has delegated coordination of non-discrimination in federally funded programs to the Center for Equal Opportunity Manager.<sup>3</sup>

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<sup>1</sup> 23 C.F.R. 200.5(n) defines a recipient as “any state, territory... political subdivision or instrumentality thereof, or any public or private agency, institution or organization or other entity or any individual in any State...to whom federal financial assistance is extended, either directly or through another recipient, for any program.”

<sup>2</sup> The Civil Right Restoration Act of 1987 restored the broad institution-wide scope and coverage of Title VI and parallel non-discrimination statutes by extending coverage to all programs and activities of Federal - Aid recipients, sub-recipients and contractors, whether such activities are federally assisted or not. It provides in pertinent part: “For the purpose of this subchapter, the term “programs or activity” and the term “program” means all the operations of a department, agency, special purpose district or other instrumentality of a State or of a local government... any part of which is extended Federal financial assistance.”

<sup>3</sup> 23 C.F.R. 200.9 specifies State highway agency responsibilities.

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**Implementation:**

This policy shall be effective immediately and implemented by all divisions of the Colorado Department of Transportation within the program under his or her authority. Each affected manager will also ensure that those working with CDOT will also comply with requirements of non-discrimination as outlined in 23 C.F.R. 200. The Colorado Department of Transportation Title VI Coordinator shall be responsible for interpreting the requirements of Title VI of the Civil Rights Act of 1964 and all applicable enforcements regulations.

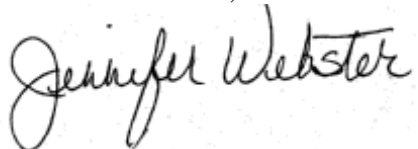
**Review Date:**

This policy will be reviewed in July of 2007.  
07/01/04



\_\_\_\_\_ 07/01/04

Executive Director, CDOT                      Date



\_\_\_\_\_ 07/01/04

Secretary, Transportation Commission    Date

\*[Neutral practices that hinder protected person from benefiting from or participating in CDOT programs or services or which substantially reduce the ability of protected persons to benefit from or participate in programs or activities.]