

COLORADO DEPARTMENT OF TRANSPORTATION (CDOT)



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM MANUAL



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SUBPART A – GENERAL

Section 1: Objectives

The Colorado Department of Transportation (CDOT) Disadvantaged Business Enterprise (DBE) Program seeks to achieve the following objectives in DOT-assisted contracts for construction, design and engineering:

1. To ensure nondiscrimination in the award and administration of contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for contracts;
3. To ensure that CDOT's DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the DBE Program eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Ref: 49 CFR 26.1





Section 2: Application

1. This DBE Program applies to a recipient of any of the following types of funds.
 - a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
 - b) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.
 - c) Airport funds authorized by 49 U.S.C. 47101, et seq.
2. The DBE Program does not apply to the following types of contracts.
 - a) Any contract that is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands,

Ref: 49 CFR 26.3



Section 3: Definitions and Terms

1. **Affiliates** (except as otherwise provided in 13 CFR part 121) means, concerns are affiliates of each other when, either directly or indirectly:
 - a) One concern controls or has the power to control the other; or
 - b) A third party or parties controls or has the power to control both; or
 - c) An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, all appropriate factors will be considered, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

2. **Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
3. **Alaska Native Corporation** (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).
4. **Asian-American** means an individual or group that is Asian Pacific American or Subcontinent Asian American as defined below.
5. **CDOT** means the Colorado Department of Transportation
6. **Compliance** means that a recipient has correctly implemented the requirements of this part.
7. **Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For the purposes of this part, a lease is considered to be a contract.



8. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a highway, transit, or airport program.
9. **Department or DOT** means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).
10. **Disadvantaged Business Enterprise or DBE** means a for-profit small business concern:
 - a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such 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.
11. **DOT-assisted contract** means any contract between a recipient and a contractor (at any DOT tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
12. **DOT/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.
13. **Emerging Small Business (ESB) Program** means CDOT's race-neutral program for emerging small businesses.
14. **Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
15. **Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
16. **Indian tribe** means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.





17. **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.
18. **Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.
19. **Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
20. **Noncompliance** means that a recipient has not correctly implemented the requirements of the 49 CFR Part 26.
21. **Operating Administration or OA** means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
22. **Personal net worth** means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
23. **Primary industry classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual--United States, 1997 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.
24. **Primary recipient** means a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.





25. **Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
26. **Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
27. **Race-conscious measure or program** is one that is focused specifically on assisting only DBEs, including women-owned DBEs.
28. **Race-neutral measure or program** is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
29. **Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.
30. **SBA certified firm** refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.
31. **Secretary** means the Secretary of Transportation or his/her designee.
32. **Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract, solely to DBE firms.
33. **Small Business Administration or SBA** means the United States Small Business Administration.
34. **Small business concern** means, with respect to firms seeking to participate as DBEs in state and DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).



35. **Socially and economically disadvantaged** individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
- a) Any individual who a recipient finds to be a socially and economically disadvantaged individual.
 - b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.
 - i. "**Black Americans**," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "**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;
 - iii. "**Native Americans**," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv. "**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, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "**Subcontinent Asian Americans**," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi. "**Women**", which means females of any ethnicity
 - vii. "**Other**," which means any additional groups whose members are designated as socially and economically disadvantaged by the 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.
36. **Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.



37. **Underutilized** means a group or individual that CDOT's disparity study determined to have a substantial level of disparity with a utilization index (the ratio of % utilization to % availability times 100) below 80.

38. **Underutilized Disadvantaged Business Enterprise or UDBE** means a firm that meets the definition of DBE above and is eligible to meet a UDBE contract goal. UDBE groups are identified by the most recent disparity study and monthly reports to the Transportation Committee based on their utilization index as described above under "Underutilization."

39. **You** refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'you must do XYZ' means that CDOT must do XYZ).

Ref: 49 CFR 26.5



Section 4: Nondiscrimination

1. CDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.
2. In administering the DBE Program, CDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

Ref: 49 CFR 26.7

Section 5: USDOT Guidance and Interpretations

1. Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this 49 CFR part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of CDOT's DBE Program and constitute the official position of the Department of Transportation.
2. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

Ref: 49 CFR 26.9

Section 6: Record Keeping and Reports

1. CDOT will continue to provide data about CDOT's DBE program to the Department as directed by DOT OAs and will provide to DOT updates of any significant changes in CDOT's DBE Program.
2. CDOT created and maintains an online bidders list called the *CDOT Bidders Loop* (<http://www.dot.state.co.us/eeo/loop/>). Consistent with the "Clarification Concerning Bidders Lists" as found in the July 16, 2003 Final Revision to 49 CFR Part 26, the *CDOT Bidders Loop* conducts an ongoing and up-to-date survey that results in a statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on CDOT Federally-assisted contracts. The CDOT Bidders Loop was designed to provide the following items using the "least burdensome and intrusive method" possible:
 - The most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on CDOT's Federally-assisted contracts for use in helping CDOT set its' overall goals.
 - A free service designed to communicate valuable and time-sensitive information electronically to firms actively seeking work on CDOT's highway construction and engineering projects.

For every firm on the CDOT Bidders Loop, the following information is included:

- a) Firm name;
- b) Firm address;
- c) Firm's status as a DBE or non-DBE;
- d) The age of the firm; and
- e) The annual gross receipts of the firm.
 - i. CDOT will obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000 - \$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting the exact figure from the firm.

Ref: 49 CFR 26.11

Section 7: Assurance Statements

1. Each financial assistance agreement CDOT signs with a DOT OA (or a primary recipient) will include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

2. Each contract CDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Ref: 49 CFR 26.13



Section 8: Exemptions or Waivers

1. On September 1, 1999, CDOT requested a waiver from the requirement of 49 CFR 26.51, to allow CDOT to narrowly tailor its program to conform with the 1998 disparity study by setting race-specific project goals for Underutilized DBEs. As a result, CDOT counts the participation of all DBEs toward CDOT's overall annual goal, but individual project goals must be met with UDBEs.
2. The Program Waiver Request is found in **Subpart H, Exhibit 1**.
3. As a result of CDOT's 2001 disparity study update, all DBEs were found to be Underutilized DBEs. CDOT will continue to identify UDBE groups by the most recent disparity study and monthly reports to the Transportation Committee based on a group's utilization index as described above under "Underutilization" in Section 3: Definitions and Terms.

Ref: 49 CFR 26.15



SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 1: Policy Statement

1. CDOT has issued signed Policy Directive 611.0, which complies with the requirements of 49 CFR 26.23.
2. A copy of Policy Directive 611.0 is found in **Subpart H, Exhibit 2**.

Ref: 49 CFR 26.23

Section 2: DBE Liaison Officer

1. CDOT has designated the following individual as the DBE Liaison Officer:

Celina Benavidez, Director of the Division of Human Resources and Administration

Address: 4201 E. Arkansas Avenue, Rm. 262
Denver, CO 80222

Telephone: 303-757-9163

Internet: Celina.Benavidez@dot.state.co.us

2. As DBE Liaison Officer, Celina Benavidez is responsible for developing, implementing and monitoring all aspects of the DBE program, with other appropriate officials, and ensuring that the CDOT complies with all provisions of 49 CFR Part 26.
3. The DBE Liaison Officer has a staff of 2 professional employees assigned to the DBE Program on a full-time basis and 1 support personnel who devote a portion of their time to the program. In addition, 2 ½ professional full-time positions are devoted to small business programs and six regional EEO representatives develop a percentage of their time to setting DBE project goals, monitoring contracts for compliance with the DBE program, and assisting DBEs.
4. The DBE Liaison has direct, independent access to the Executive Director of CDOT concerning DBE program matters.



5. The duties of the DBE Liaison and her staff include the following:
- a) Gathering and reporting statistical data and other information as required by DOT.
 - b) Working with all departments to set overall annual goals.
 - c) Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
 - d) Identifying contracts and procurements so that DBEs are included in solicitations and monitors results.
 - e) Analyzing CDOT's progress toward goal attainment and identifying ways to improve progress.
 - f) Participating in pre-bid meetings.
 - g) Advising CDOT's Executive Director, Transportation Commission and DBE Subcommittee to the Commission on DBE matters and achievement.
 - h) Participating with the legal counsel and project director to determine contractor compliance with good faith efforts.
 - i) Providing DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
 - j) Planning and participating in DBE training seminars.
 - k) Certifying DBEs according to the criteria set by DOT and acting as liaison to the Uniform Certification Process in Colorado.
 - l) Providing outreach to DBEs and community organizations to advise them of opportunities.
 - m) Maintaining the CDOT's updated directory on certified DBEs
 - n) In addition, all CDOT personnel responsible for contract administration are required to ensure DBE participation according to contract specifications.

Ref: 49 CFR 26.25



Section 3: DBE Financial Institutions

1. CDOT has thoroughly investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in Colorado. To date CDOT has identified only one such bank in Colorado - the Native American Bank, NA. The Native American Bank is a federally-chartered bank that is owned by **Native American Bancorporation**, a bank holding company, has been organized by a group of Tribal Nations and Alaska Native Corporations. This bank is responsible for administering the USDOT guaranteed loan program. If any additional banks that are owned and controlled by socially and economically disadvantaged businesses become available, CDOT will make reasonable efforts to use these institutions.
2. CDOT will also encourage prime contractors to use such institutions where possible.
3. Information on the availability of such institutions can be obtained from the Business Programs Office.

Ref: 49 CFR 26.27



Section 4: Prompt Payment And Retainage

1. Colorado's Prompt Payment Law (CRS 24-91-103(2)), requires the contractor to pay all subcontractors within seven calendar days of receipt of payment from a public entity, providing the subcontractor complies with the requirements of the law.
2. Section 107.01 (Laws to be Observed) in CDOT's Standard Specifications for Road and Bridge Construction requires the contractor to comply with all Federal, State and local laws...which may affect those engaged or employed on the work.
3. CDOT Form No. 205 (Application to Sublet) informs the prime and the subcontractor that Colorado has a Prompt Pay statute.
4. CDOT's Resident Engineers (RE) will investigate and act on complaints regarding lack of prompt payment. If the RE determines that the prime contractor is delinquent, he will recommend that the prime contractor's prequalification to bid on future projects be suspended. The Chief Engineer will follow the standard procedure to examine whether the prime contractor's prequalification should be suspended based on the contractor's failure to obey the law.
5. Contractors and subcontractors may view CDOT pay estimates at:
www.dot.state.co.us/payestimates/pay.htm.
6. Colorado's Prompt Pay Statute is in **Subpart H, Exhibit 3**.
7. CDOT established, as part of the DBE program and the construction special provisions (109.06), a contract clause that requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven days from receipt of each payment CDOT makes to the prime contractor.
8. The August 26, 2004 revision to subsection 109.06 of the construction special provisions specifies that CDOT may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 17 days after payment to the prime contractor.
9. The August 26, 2004 Revision of Section 109 Retainage and Partial Payments is in **Subpart H, Exhibit 13** and can also be accessed online at:
<http://www.dot.state.co.us/DesignSupport/Construction/1999SSP/109rpp.doc>

Ref: 49 CFR 26.29



Section 5: DBE Directory

1. CDOT maintains and makes available to interested persons an online UCP directory identifying all firms eligible to participate as DBEs in CDOT's program and the City and County of Denver's program. The listing for each firm includes each firm's name, address, phone number, fax number, contact person, date of most recent certification, and the types of work the firm has been certified to perform as a DBE. As part of its UCP program, CDOT revises and publishes updates to the online directory daily .
2. CDOT also strives to include in this directory all DBEs that can reasonably be expected to compete for aviation and intermodal transportation construction-related work.
3. The Directory can be obtained online at http://www.dot.state.co.us/app_ucp/
4. Sample pages from the DBE/UDBE Directory may be found in **Subpart H, Exhibit 4**.

Ref: 49 CFR 26.31

Section 6: Overconcentration

1. CDOT will review DBE participation reports and statistics each year to determine whether an overconcentration of DBEs has become a problem.
2. If CDOT determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, CDOT will devise appropriate measures to address this overconcentration and obtain the approval of the concerned DOT operating administration.
3. In the past, when CDOT has identified an overconcentration of DBEs in a specific type of work, CDOT has varied the use of contract goals, to the extent consistent with 49 CFR part 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

Ref: 49 CFR Part 26.33

Section 7: Monitoring and Enforcement Mechanisms

1. CDOT will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Part 26.109. CDOT also will consider similar action under CDOT's own legal authorities, including review of the contractor's prequalification to bid and possible debarment actions.
2. CDOT has implemented appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). These monitoring and enforcement mechanism enable CDOT to verify that the work committed to DBEs at contract award is actually performed by the DBEs. The mechanisms are set forth in CDOT's standard special provision which establish the monitoring and enforcement mechanisms for CDOT's DBE Program.

NOTE TO THE FOLLOWING PROVISIONS: CDOT has implemented changes to its traditional DBE goal setting process to narrowly tailor its program. As required by Federal legislation, CDOT sets an overall annual DBE goal. The annual DBE goal is met through the use of various methods described in this Plan. Contract specific goals are set only for those groups that are identified, through a Disparity Study or other statistical mechanisms, as "Underutilized." Thus, individual project goals are only set for those groups where there is a significant disparity between the percent of available contractors from a group and the percent of contract dollars that group receives. In addition to awarding subcontracts to Underutilized DBEs (UDBE) which are counted toward individual project goals, CDOT encourages contractors to continue to voluntarily use all DBEs as subcontractors. The participation by all DBEs is counted towards CDOT's overall annual goal. Project specific goals will be set for those groups identified as UDBEs, with failure to achieve such goals subject to Good Faith Effort documentation requirements before and throughout the life of the contract as described below.

NOTE: As of March 2006, all DBEs have been found to be "underutilized" and can be used to meet individual project goals.



3. Please refer to CDOT's standard special provisions as found in **Subpart H, Exhibit 5** (see <http://www.dot.state.co.us/DesignSupport/Construction/2005SpecsBook/2005SSSP/DBE.doc>) for a detailed description of the following monitoring and enforcement mechanisms in place:
 - a) "Bidding Requirements" [*section (c) in the standard special provisions*]
 - b) "Counting DBE Participation Toward Contract Goals and CDOT's Annual DBE Goal" [*section (d) in the standard special provisions*]
 - c) "Replacement of UDBE Subcontractors used to meet the contract goal" [*section (e) in the standard special provisions*]
 - d) "Sanctions" [*section (f) in the standard special provisions*]
4. The forms which CDOT uses to monitor and enforce the DBE Program (and which were referenced in the DBE special provision) are found in **Subpart H, Exhibit 6**. CDOT's forms are the mechanism that provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In its' reports of DBE participation to the Department, CDOT will display both commitments and attainments.

Ref: 49 CFR Part 26.37



SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 1: Role of Statutory 10% Goal

1. The statutes authorizing the DBE Program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
2. This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in contracts.
3. The national 10 percent goal does not authorize or require CDOT to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

Ref: 49 CFR Part 26.41

Section 2: Use of Set-Asides or Quotas

1. CDOT does not use quotas in any way in the administration of the DBE program.
2. CDOT does not set-aside contracts for DBEs except in limited and extreme circumstances when no other method can reasonably be expected to redress egregious instances of discrimination. Such a step would need authorization from CDOT's Transportation Commission.

Ref: 49 CFR 26.43

Section 3: Setting Overall Goals

1. To make CDOT's DBE Program as useful as possible to the public, the amount of the annual overall goal and the method used to set that goal will be updated annually. If the method of setting goals changes, the program update will be submitted to DOT for review and approval.
2. CDOT's overall annual goal is based on evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on CDOT's contracts for highway construction, design and engineering.
3. Before establishing the overall goal each year, CDOT prepares statistical reports and collects relevant data. CDOT also consults with local minority, majority and women's contracting associations and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and CDOT's efforts to establish a level playing field.
4. The annual overall goal is submitted to the Transportation Commission for their approval. In addition to several advertisements and other outreach efforts, a public hearing is held to hear testimony from the contractors, organizations and citizens regarding the annual goal.
5. Following Commission approval, CDOT publishes a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at CDOT's Business Program Office, 1325 S. Colorado Blvd., Building B, Suite 404, Denver, CO 80222 for 30 days following the date of the notice, and informing the public that CDOT and the Department will accept comments on the goals for 45 days from the date of the notice. The notice will include addresses to which comments may be sent, and will be published in general circulation media and available minority-focused media and trade association publications.
6. CDOT's overall goal is set on a fiscal year basis, and is submitted to the FHWA for review by August 1 of each year, unless the Administrator of the concerned OA establishes a different submission date. CDOT's overall goal submission to DOT includes a summary of information and comments received during the public participation process and CDOT's responses as well as the method CDOT used to calculate the goal.

7. The Regulation does not require CDOT to obtain prior FHWA concurrence with its overall goal. However, if FHWA's review suggests that CDOT's overall goal has not been correctly calculated, or that CDOT's method for calculating goals is inadequate, FHWA may, after consulting with CDOT, adjust the overall goal or require that CDOT do so. The adjusted overall goal is binding on CDOT.
8. If necessary, CDOT may request the approval of FHWA for an interim goal and/or goal-setting mechanism. Any such request and mechanism will be in compliance with 49 CFR part 26.
9. CDOT begins using the new overall goal on October 1 of each year, unless CDOT has received other instructions from DOT or, if the goal is established on a project basis, by the time of the first solicitation for a contract for the project.
10. CDOT's overall goal setting process is based on guidance provided in 49 CFR part 26. The following is a summary of the method CDOT used to calculate the goal for the next FFY:
 - a) CDOT established a base figure for the relative availability of DBEs using data from DBE directories, CDOT's disparity study, and the CDOT Bidders Loop (i.e., Bidders List).
 - b) CDOT examined all the evidence available in the relevant market area to determine what adjustments to the base figure were needed. Evidence considered included:
 - i. Current capacity of DBEs to perform work on CDOT contracts, as measured by the volume of work DBEs have performed in recent years.
 - ii. Evidence and recommendations from CDOT's disparity study that wasn't already accounted for in CDOT's base figure.
 - iii. CDOT's proposed highway construction budget for the next FFY, including types and location of work.
 - iv. Participation of DBEs and UDBEs on CDOT projects in previous years.
11. Based on the previous method, CDOT establishes an overall goal for each FFY as a percentage of the Federal financial assistance CDOT will expend in contracts for highway construction, design and engineering. This goal represents the level of DBE participation that CDOT would expect, absent the effects of discrimination.
12. **Subpart H, Exhibit 7** is a detailed description of CDOT's methodology for establishing its overall goal for the latest FFY .





Ref: 49 CFR Part 26.45

Section 4: Failure to Meet Overall Goal

1. CDOT cannot be penalized or treated by the Department as being in noncompliance with the 49 CFR Part 26 because CDOT's DBE participation falls short of the overall goal set by CDOT unless:
 - a) CDOT has failed to implement and administer the DBE program in good faith.
 - b) CDOT does not have an approved DBE program.
 - c) CDOT does not have an overall DBE goal.

Ref: 49 CFR Part 26.47



Section 5: Establishing Overall Goals for Transit Vehicle Manufacturers

1. CDOT, as an FTA recipient, requires that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. CDOT does not include FTA assistance used in transit vehicle procurements in the base amount from which CDOT's overall goal is calculated.
2. If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.
3. As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.
4. As a recipient, CDOT may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.
5. As an FHWA or FAA recipient, CDOT may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If CDOT chooses to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

Ref: 49 CFR part 26.49

Section 6: Meeting Annual Overall Goals

1. CDOT meets the maximum feasible portion of the overall annual goal by using race-neutral methods. These methods are discussed in Subpart C, Section 10.
2. Through its contracts and specifications, CDOT requires prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records are to be made available for inspection upon request by any authorized representative of the CDOT or DOT. This reporting requirement also extends to any certified DBE subcontractor.
3. CDOT monitors the actual payments to DBE firms for work committed to them at the time of contract award through a process described as follows:
 - a) CDOT's process uses interim audits of contract payments to DBEs, which includes a review of payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.
 - b) CDOT's process also uses CDOT Form 17 to determine whether the total amount a contractor has paid to DBEs on each project is equal to the amounts reported to CDOT on previous forms.
4. CDOT reports DBE participation to DOT as follows:
 - a) For FAA funds, CDOT submits annually, DOT's Uniform Report of DBE Awards or Commitments and Payments Form.
 - b) For FTA funds, CDOT reports DBE participation on a semi-annual basis, using DOT's Uniform Report of DBE Awards or Commitments and Payments Form . This report will reflect payments actually made to DBEs on DOT assisted contracts.
 - c) For FHWA funds, CDOT reports DBE participation on a semi-annual basis, using DOT's Uniform Report of DBE Awards or Commitments and Payments Form.

Ref: 49 CFR part 26.51

Section 7: Use of Contract Goals

1. CDOT will use contract goals to meet any portion of the overall goal CDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of CDOT's overall goal that is not projected to be met through the use of race-neutral means.
2. CDOT will establish contract goals only on those contracts that have subcontracting possibilities. CDOT will not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).
3. CDOT will express CDOT's contract goals as a percentage of the total amount of a contract. CDOT will monitor DBE participation by gender and ethnicity and by Federal dollars and by total dollars.
4. When CDOT submits its overall goal for review by FHWA, CDOT will also submit its projection of the portion of the goal expected to be met through race-neutral means and the basis for that projection. CDOT will establish contract goals to meet any portion of CDOT's overall goal CDOT does not project being able to meet using race-neutral means.
5. Contract specific goals are set only for those groups that are identified, through a Disparity Study or other statistical mechanisms, as "Underutilized." Thus, individual project goals are only set for those groups where there is a significant disparity between the percent of available contractors from a group and the percent of contract dollars that group receives. In addition to awarding subcontracts to Underutilized DBEs (UDBE) which are counted toward individual project goals, CDOT encourages contractors to continue to voluntarily use all DBEs as subcontractors. The participation by all DBEs is counted towards CDOT's overall annual goal. Project specific goals will be set for those groups identified as UDBEs, with failure to achieve such goals subject to Good Faith Effort documentation requirements before and throughout the life of the contract as described in Section 8.

Note: The groups identified as "Underutilized" may change annually depending on the statistical information maintained by CDOT in the participation by all DBEs.

6. CDOT will meet the maximum feasible portion of CDOT's overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).
7. The race-neutral means CDOT intends to use include, but are not limited to, the following:
 - a) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
 - b) Unbundling large contracts to make them more accessible to small businesses;
 - c) Requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
 - d) Through the DBE Supportive Services Program, or through incentives in the ESB Program, providing DBEs with assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing, developing and improving immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
 - e) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
 - f) Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
 - g) Focusing on special projects to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;



- h) Ensuring distribution of CDOT's DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - i) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
8. CDOT will set contract goals only on those contracts that have subcontracting possibilities that meet the appropriate availability and capacity benchmarks established through its goal setting process. This process includes such factors as the type of work involved, the location of the work, and the availability of UDBEs for the work of the particular contract. However, over the period covered by CDOT's overall goal, CDOT will set contract goals so that they will cumulatively result in meeting any portion of CDOT's overall goal CDOT does not project being able to meet through the use of race-neutral means.
9. Although FHWA's approval of each contract goal is not required, they may review and approve or disapprove any contract goal CDOT establishes.
10. CDOT's overall annual goals provide for participation by all certified DBEs and are not limited to specific groups.
11. The goals CDOT sets on specific projects, will specify participation by Underutilized DBEs (UDBEs).
12. To ensure that CDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination and in compliance with 49 CFR part 26, CDOT will adjust the use of contract goals as follows:
 - a) If CDOT's approved projection under paragraph (c) of this section estimates that CDOT can meet CDOT's entire overall goal for a given year through race-neutral means, CDOT will implement CDOT's program without setting contract goals during that year.
 - b) If, during the course of any year in which CDOT is using contract goals, CDOT determines that CDOT will exceed CDOT's overall goal, CDOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If CDOT determines that CDOT will fall short of CDOT's overall goal, then CDOT will make appropriate modifications in CDOT's use of race-neutral and/or race-conscious measures to allow CDOT to meet the overall goal.



- c) If the DBE participation CDOT has obtained by race-neutral means alone meets or exceeds CDOT's overall goals for two consecutive years, CDOT will continue using only race-neutral means to meet CDOT's overall goals unless and until CDOT does not meet CDOT's overall goal for a year.
- d) If CDOT obtains DBE participation that exceeds CDOT's overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), CDOT will reduce CDOT's use of contract goals proportionately in the following year.
- e) In any year in which CDOT projects meeting part of CDOT's goal through race-neutral means and the remainder through contract goals, CDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively, and CDOT will report this data to the concerned OA as provided in 49 CFR part 26.11.

Ref 49 CFR Part 26.51

Section 8: Good Faith Efforts Process

1. CDOT continually evaluates its Good Faith Efforts Process to identify any areas for improvement. If any changes are recommended to the process, CDOT will submit a program modification to the OA for approval. CDOT hasn't projected a time frame for any permanent changes. Based on this, the requirements in this section describe CDOT's current process.
2. When CDOT has established a DBE contract goal, CDOT will award the contract only to a bidder who makes good faith efforts to meet it. CDOT will determine that a bidder has made good faith efforts if the bidder does either of the following things:
 - a) Documents that it has obtained enough DBE participation to meet the goal; or
 - b) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder does document adequate good faith efforts, CDOT will not deny award of the contract on the basis that the bidder failed to meet the goal.
3. CDOT will also require from the contractor written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
4. If the contract goal is not met, the contractor must submit a CDOT form No. 718 and evidence of good faith efforts to the Business Programs Office no later than 4:00 on the day following the bid opening.
5. It is the obligation of the bidder to make good faith efforts. The bidder can demonstrate that it has done so either by meeting the contract goal or by documenting good faith efforts. Examples of good faith efforts are found in Subpart G.
6. Staff of the Business Programs Office will be responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. They will ensure that all information is complete and accurate and adequately documents the bidder good faith efforts before CDOT commits to the performance of the contract by the bidder.



7. Within 5 working days of being informed by CDOT that it is not a responsible bidder because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. The reconsideration official(s) 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 in writing to the following reconsideration official(s):

Good Faith Efforts Committee
C/o Manager, Center for EO
4201 E. Arkansas Avenue, Denver, CO 80222

Phone: 303-757-9969

Fax: 303-757-9019

Email address: Debra.Gallegos@dot.state.co.us

8. 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 to do so.
9. The bidder will have the opportunity to meet in person with CDOT's reconsideration official(s) to discuss the issue of whether it met the goal or made adequate good faith efforts to do.
10. CDOT 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 to do so.
11. The result of the reconsideration process is not administratively appealable to the Department of Transportation.
12. See Subpart G for further guidance in determining the adequacy of a bidder's good faith efforts.





13. In CDOT's solicitations for contracts for which a contract goal has been established, CDOT will require from the apparent low bidder the following information by 4:00 the day following the bid opening; award of the contract will be conditioned on meeting the requirements of this section;
 - a) The names and addresses of DBE firms that will participate in the contract;
 - b) Description of the work that each DBE will perform;
 - c) The dollar amount of the participation of each DBE firm participating;
 - d) Written documentation of the bidder commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment;
 - f) If the contract goal is not met, evidence of good faith efforts, and evidence of good faith efforts.

14. In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, CDOT may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. CDOT will maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

15. CDOT will apply the requirements of this section to DBE bidders for prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, CDOT will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

16. CDOT also has a Good Faith Efforts requirement when a DBE is replaced on a contract.





17. CDOT requires a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. CDOT requires the prime contractor to notify the project engineer and the Region EEO Representative immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, CDOT will require the prime contractor to obtain CDOT's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith effort.
18. The forms mentioned in this section can be found in **Subpart H, Exhibit 6**. The DBE Special Provision which enforces items in this section can be found in **Subpart H, Exhibit 5**.
19. Standard contract sanctions apply to DBE Participation and/or Good Faith Efforts.

Ref 49 CFR part 26.53



Section 9: Counting DBE Participation Toward Goals

Note: Because of changes made to CDOT's DBE goal setting process in an effort to narrowly tailor its program, there are several areas that need clarification. 1) CDOT will count toward its overall annual DBE goal, participation by all DBEs. Project Specific UDBE goals will be counted according to the group classification of that DBE as noted during the DBE Certification process. For instance, an African-American UDBE will be noted as such if the firm is owned at least 51% by an African-American. 2) The following provisions refer to CDOT's method of counting both its overall and contract goals. As such, when a Project Specific goal is discussed, goals are met with a specified UDBE group. When CDOT's overall annual goal is discussed, the goal is met by all participating DBEs.

1. CDOT will count DBE participation toward overall and contract goals as provided in 49 CFR part 26.55.
2. When a DBE participates in a contract, CDOT will count toward DBE goals only the value of the work actually performed by the DBE.
 - a) CDOT will count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (2)(b) of this section) that is performed by the DBE's own forces. CDOT will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - b) CDOT will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, toward DBE goals, provided CDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.

3. When a DBE performs as a participant in a joint venture, CDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
4. CDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - a) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, CDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - b) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, CDOT will examine similar transactions, particularly those in which DBEs do not participate.
 - c) 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, CDOT will presume that it is not performing a commercially useful function.
 - d) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. CDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - e) CDOT's decisions on commercially useful function matters are subject to review by the concerned OA, but are not administratively appealable to DOT.

5. CDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
 - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs.
 - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE (*adopted to comply with the 1999 final rule change – see note below*).

Note: 49 CFR Part 26, as amended on July 16, 2003 (Published 6/16/03) allows recipients (such as CDOT) to count for DBE credit the dollar volume attributable to no more than twice the number of trucks on a contract owned by a DBE firm or leased from another DBE firm, but (the recipient) is not required to do so. The final rule permits, but does not require, recipients to count credit in this manner. That is, in accordance with the 2003 amendment, CDOT has chosen to continue the counting provisions its DBE program adopted to comply with the 1999 final rule change as found in this manual. In the future, if CDOT chooses to modify its counting provisions to count the additional credit for non-DBE lessees permitted by the 2003 amendment, it must do so via a change to its DBE program approved by the FHWA. The OA approval is necessary to ensure the appropriate safeguards are taken by the recipients to prevent fraud (Federal Register/Vol. 68, No. 115/Monday, June 16, 2003/Rules and Regulations page 35551).

- f) For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
6. CDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- a) If the materials or supplies are obtained from a DBE manufacturer, CDOT will count 100 percent of the cost of the materials or supplies toward DBE goals.
 - i. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - b) If the materials or supplies are purchased from a DBE regular dealer, CDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.
 - i. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - ii. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - iii. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.



- iv. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).
 - v. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, CDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided CDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. CDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
7. If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, CDOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR part 26.87(i).
 8. CDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward CDOT overall goal.
 9. CDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

Ref: 49 CFR Part 26.55



Section 10: Race-Neutral Elements

1. CDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.
2. CDOT uses the following race-neutral means to increase DBE participation:
 - a) CDOT's Emerging Small Business (ESB) Program was initiated in 1992 to fulfill the requirements of the U.S. Supreme Court's ruling in *Richmond v. Croson*. This program assists small businesses to obtain work on CDOT construction and design projects. Approximately 50% of the ESBs are also DBEs.
 - b) The ESB Program worked with the Colorado Contractor's Association (CCA) to develop a mentor-protégé program. Several of the protégés are also DBEs. Each protégé has two mentors.
 - c) Information on the ESB Program is located in **Subpart H, Exhibit 8**.
 - d) Questions about CDOT's ESB Program should be addressed to Karen Gonzales, ESB Program Administrator at:

Colorado Department of Transportation
Business Programs Office
4201 E. Arkansas Avenue
Denver, CO 80222

Phone: 303-757-9162
Or
1-800-925-3427
3. Please refer to **Subpart H, Exhibit 7** for a detailed description of CDOT's methodology for establishing the race-neutral and race-conscious components of its' overall goal for the next FFY.
4. CDOT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 49 CFR part 26.51(f)).
5. CDOT will track and report race-neutral and race-conscious participation separately.
6. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:
 - a) DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;



- b) DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- c) DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Ref: 49 CFR part 26.51





SUBPART D – DBE CERTIFICATION APPLICATION AND STANDARDS

In January 2003, by Executive Order of the Governor of the State of Colorado, the Office of Certification was transferred from the Department of Regulatory Agencies (DORA) to CDOT. The Office of Certification is now a permanent office of CDOT's Center for Equal Opportunity.

Section 1: DBE Application

1. CDOT's certification application form and documentation requirements are found in **Subpart H, Exhibit 9 - 11**.
2. For information about the certification process or to apply for certification, firms should contact CDOT at:

Phone: 303-512-4140

Or

Website: <http://www.dot.state.co.us/certification/ocindex.htm>

3. Firms also may call CDOT's Business Programs Office at:

Phone: 303-757-9234

49 CFR part 26.83



Section 2: Recertification

1. CDOT will review the eligibility of DBEs that CDOT certified under former 49 CFR part 23, to make sure that they meet the standards of Subpart D of 49 CFR part 26. CDOT will complete this review no later than three years from the most recent certification date of each firm. CDOT will schedule the reviews the first year with those DBEs that have been the most active during the previous year. The second year, CDOT will review the eligibility of additional DBEs that have been active on CDOT projects, and the third year, will review the remaining DBEs.
2. For firms that CDOT has certified or reviewed and found eligible under 49 CFR part 26, CDOT will again review their eligibility every three years. These reviews will include the following components:
 - a) Having the DBE complete a new DBE application
 - b) Doing an on-site for the firm.
3. **Subpart H, Exhibit 10** contains forms to be used for recertification.

49 CFR part 26.83

Section 3: Reporting Changes

1. Each year, CDOT will require DBEs to submit with an affidavit stating that there has been no change in ownership or control along with documentation of the firm's size and gross receipts.
2. CDOT will notify all currently certified DBE firms of these requirements at the time the firm is originally certified and with their annual review. This notification will inform DBEs that to submit the no-change affidavit, and their owners must swear or affirm that they meet all regulatory requirements of 49 CFR part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a 49 CFR part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.
3. The form used to report changes is found in **Subpart H, Exhibit 11**.

Ref: 49 CFR part 26.83

Section 4: Burdens of Proof

1. In determining whether to certify a firm as eligible to participate as a DBE, CDOT will apply the standards of 49 CFR 26.61.
2. The firm seeking certification has the burden of demonstrating to CDOT, by a preponderance of the evidence, that it meets the requirements of this subpart concerning social disadvantage, business size, ownership, and control.
3. CDOT will rebuttably presume that members of the designated groups identified in Sec. 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to CDOT they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in Sec. 26.67(a). Applicants do have the obligation to provide CDOT with information concerning their economic disadvantage (see Sec. 26.67).
4. CDOT will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Ref: 49 CFR 26.61

Section 5: Group Membership

1. If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see Sec. 26.61(c)), CDOT has a well founded reason to question the individual's claim of membership in that group, CDOT will require the individual to present additional evidence that he or she is a member of the group.
2. CDOT will provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.
3. In implementing this section, CDOT will take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate Sec. 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.
4. In determining a group membership classification, CDOT will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. CDOT may require the applicant to produce appropriate documentation of group membership.
5. If there is a determination that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis.
6. CDOT decisions concerning membership classifications are subject to Colorado's certification appeals procedure.

Ref: 49 CFR Part 26.63



Section 6: Business Size Determinations

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. CDOT must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.
2. Even if it meets the requirements of paragraph (1) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$17.42 million. The Secretary adjusts this amount for inflation from time to time.

Ref: 49 CFR Part 26.65





Section 7: Determination of Social and Economic Disadvantage

1. Determination of Economic Disadvantage:

- a) CDOT will require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$750,000.
- b) CDOT will require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation will not be unduly lengthy, burdensome, or intrusive.
- c) The personal net worth form is found in the DBE Certification application in **Subpart H, Exhibit 9**; the Change Affidavit form is in **Subpart H, Exhibit 11**.
- d) In determining net worth, CDOT will exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth.
- e) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, CDOT will include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
- f) Notwithstanding any provision of Federal or state law, CDOT will not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. Provided, that CDOT must transmit this information to DOT in any certification appeal proceeding under Sec. 26.89 in which the disadvantaged status of the individual is in question.
- g) If the statement of personal net worth that an individual submits under paragraph (a) of this section shows that the individual's personal net worth exceeds \$750,000, the individual's economic disadvantage is rebutted. CDOT is not required to have a proceeding in order to rebut the DBE's status as economically disadvantaged.





2. Determination of Social Disadvantage:

- a) CDOT will require all DBE applicants to submit a signed, notarized certification that the company's disadvantaged owner(s) have experienced social disadvantage based upon the effects of racial, ethnic or gender discriminations as a prerequisite to certification for CDOT projects.

3. SBA 8(a) and SDB Firms:

- a) CDOT has implemented the requirements of the July 16, 2003 revision to 49 CFR 26.84-89 concerning the DOT/SBA Memorandum of Understanding. See Subpart E, Section 3.



Section 8: Determination of Ownership

1. In determining whether the socially and economically disadvantaged participants in a firm own the firm, CDOT will consider all the facts in the record, viewed as a whole.
2. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
 - a) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - b) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
 - c) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
3. The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
4. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if –
 - a) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
 - b) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

5. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
6. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
 - a) The owner's expertise must be:
 - i. In a specialized field;
 - ii. Of outstanding quality;
 - iii. In areas critical to the firm's operations;
 - iv. Indispensable to the firm's potential success;
 - v. Specific to the type of work the firm performs; and
 - vi. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - b) The individual whose expertise is relied upon must have a significant financial investment in the firm.
7. CDOT will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual:
 - a) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - b) Through inheritance, or otherwise because of the death of the former owner.

8. CDOT will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:
 - a) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - b) Involved in the same or a similar line of business; or
 - c) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
9. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to CDOT, by clear and convincing evidence, that:
 - a) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - b) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
10. CDOT will apply the following rules in situations in which marital assets form a basis for ownership of a firm:
 - a) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, CDOT will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. CDOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
 - b) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.



11. CDOT may consider the following factors in determining the ownership of a firm. However, CDOT will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
- a) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;
 - b) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
 - c) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, CDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Ref: 49 CFR Part 26.69



Section 9: Determination of Control

1. In determining whether socially and economically disadvantaged owners control a firm, CDOT will consider all the facts in the record, viewed as a whole.
2. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - a) In determining whether a potential DBE is an independent business, CDOT will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - b) CDOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
 - c) CDOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
 - d) In considering factors related to the independence of a potential DBE firm, CDOT will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
3. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR part 26.69(j)(2).

4. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - a) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - b) In a corporation, disadvantaged owners must control the board of directors.
 - c) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
5. Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
6. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
7. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

8. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, CDOT will not deny certification solely on the ground that the person lacks the license or credential. However, CDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
9. CDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. CDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.
10. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, CDOT may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
11. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

12. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, CDOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as CDOT does in other situations, without regard to whether or not the other persons are immediate family members.
 - a) If CDOT cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

13. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to CDOT, by clear and convincing evidence, that:
 - a) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - b) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

14. In determining whether a firm is controlled by its socially and economically disadvantaged owners, CDOT may consider whether the firm owns equipment necessary to perform its work. However, CDOT will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

15. CDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to CDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. CDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but CDOT will verify the disadvantaged owner's control of the firm in the additional type of work.
16. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, CDOT will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
17. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
18. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Ref: 49 CFR Part 26.71



Section 10: Other Rules Affecting Certification

1. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (2) of this section, CDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
2. CDOT may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
3. CDOT will evaluate the eligibility of a firm on the basis of present circumstances. CDOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor will CDOT refuse to certify a firm solely on the basis that it is a newly formed firm.
4. DBE firms and firms seeking DBE certification shall cooperate fully with CDOT requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
5. Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.





6. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm) cannot be an eligible DBE.
 - a) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, CDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - b) CDOT may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:
 - i. **EXAMPLE 1:** Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.
 - ii. **EXAMPLE 2:** Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.
 - iii. **EXAMPLE 3:** Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so CDOT may certify the subsidiary, if all other requirements are met.
 - iv. **EXAMPLE 4:** Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, CDOT will not certify it because it fails to meet control requirements.



- v. **EXAMPLE 5:** Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so CDOT will not certify the subsidiary.
 - vi. **EXAMPLE 6:** The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.
7. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
 8. CDOT will not require a DBE firm to be prequalified as a condition for certification unless CDOT requires all firms that participate in its contracts and subcontracts to be prequalified.
 9. A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of Sec. 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in Sec. 26.71.
 10. CDOT will apply the following special rules to the certification of Alaska Native Corporations (ANCs).
 - a) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
 - i. The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

- ii. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
 - iii. The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
- b) As a recipient to whom an ANC-related entity applies for certification, CDOT will not use the DOT uniform application form (see Appendix F of this part). CDOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. CDOT will also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).
- c) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

Ref: 49 CFR Part 26.73

SUBPART E – CERTIFICATION PROCEDURES

Section 1: Unified Certification Programs

1. In accordance with the requirements of 49 CFR part 26.81, DOT recipients in Colorado adopted a Unified Certification Program. The Colorado Unified Certification Program (COUCP) was submitted to FHWA and DOT and was subsequently approved. It has been implemented with all DOT recipients in the State of Colorado operating in accordance with its terms. Interested applicants apply for DBE certification only once in order to be determined eligible to participate as a DBE with any DOT recipient in the state.
2. A UCP Executive Committee (UCPEX) was established to oversee the COUCP. Among its responsibilities is recognizing additional certifying entities within the COUCP.
3. Colorado's DOT recipients agreed that the UCP will take the form of Interagency Recognition a form of reciprocity.
4. In Colorado, there are two agencies authorized to certify firms as DBEs –CDOT's Office of Certification and the City and County of Denver's Mayor's Office of Contract Compliance (MOCC).
5. Prior to establishment of the COUCP, CDOT and MOCC maintained separate DBE directories. All firms previously certified by at least one of those agencies have been "grand-fathered" into the COUCP directory, thus consolidating the two directories. Firms certified by both entities at different times, creating different expiration dates, will be identified in the on-line directory by the longest expiration date and will become the administrative responsibility of that entity.
6. New applicants are added to the directory as they are certified by CDOT or MOCC. The directory is updated nightly to ensure on-time information is displayed.
7. DOT recipients in Colorado may use only firms from the COUCP directory to meet their DBE goals. An applicant need apply only one time in order to be eligible to meet the DBE goals of any DOT recipient within Colorado, thus meeting DOT's objective of "one-stop shopping."
8. All certifications by UCPs will be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.



9. A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP will share its information and documents concerning the firm with other UCPs that are considering the firm's application.
10. Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement will outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
11. Pending the establishment of UCPs meeting the requirements of this section, CDOT may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. CDOT may also grant reciprocity to other recipient's certification decisions.
12. Each UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP will make the directory available to the public electronically, on the internet, as well as in print. The UCP will update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.
13. Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

Ref: 49 CFR Part 26.81



Section 2: Procedures in Making Certification Decisions

1. CDOT will use the certification standards of Subpart D and the certification procedures of Subpart E to determine the eligibility of firms to participate as DBEs in CDOT's contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. CDOT will make certification decisions based on the facts as a whole. CDOT has contracted with the Office of Certification at the Department of Regulatory Agencies (DORA) to perform certification investigations and decisions. Where "CDOT" is listed in the following sections, DORA is performing these functions under contract with CDOT.
2. CDOT will ensure that only firms certified as eligible DBEs under this section participate as DBEs in CDOT's program.
3. CDOT will determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP will meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
 - a) CDOT will take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part;
 - b) Perform an on-site visit to the offices of the firm. CDOT will interview the principal officers of the firm and review their resumes and/or work histories. CDOT will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in CDOT's jurisdiction or local area. CDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
 - c) If the firm is a corporation, analyze the ownership of stock in the firm;
 - d) Analyze the bonding and financial capacity of the firm;
 - e) Determine the work history of the firm, including contracts it has received and work it has completed;
 - f) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
 - g) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

- h) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.
 - i. CDOT will use the application form provided in Appendix F of this part without change or revision. However, CDOT may provide in its DBE program with the approval of the concerned operating administration, supplementing the form by requesting additional information not inconsistent with this part.
 - i) CDOT will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - j) CDOT will review all information on the form prior to making a decision about the eligibility of the firm.
- 4. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information CDOT has obtained about that firm (e.g., including application materials or the report of a site visit, if CDOT has made one to the firm), CDOT will promptly make the information available to the other recipient.
- 5. When another DOT recipient has certified a firm, CDOT has discretion to take any of the following actions:
 - a) Certify the firm in reliance on the certification decision of the other recipient;
 - b) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information CDOT requires the applicant to provide; or
 - c) Require the applicant to go through CDOT's application process without regard to the action of the other recipient.
- 6. Subject to the approval of the concerned OA part of CDOT's DBE program, CDOT may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.



7. CDOT will safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
8. Once CDOT has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of Section 4 of this subpart. CDOT may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.
9. All DBEs must inform CDOT or the UCP in writing of any change in circumstances affecting the DBE's ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in CDOT's application form.
 - a) Changes in management responsibility among members of a limited liability company are covered by this requirement.
 - b) The DBE must attach supporting documentation describing in detail the nature of such changes.
 - c) The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under §26.109(c).
10. A DBE must provide to CDOT, every year on the anniversary of the date of the DBE's certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the CDOT under paragraph (i) of this section. The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the DBE firm's size and gross receipts. If the DBE fails to provide this affidavit in a timely manner, the DBE will be deemed to have failed to cooperate under §26.109(c).





11. CDOT will make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. CDOT may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. CDOT may establish a different time frame in CDOT's DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned OA. CDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

Ref: 49 CFR part 26.83





Section 3: Application Process Under DOT/SBA MOU

1. When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, CDOT will accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete the US DOT mandated application form and package. The applicant may submit the package directly, or may request that the SBA forward the package to CDOT. Pursuant to the MOU, the SBA will forward the package within thirty days.
2. If necessary, CDOT may request additional relevant information from the SBA. The SBA will provide this additional information within forty-five days of CDOT's written request.
3. Before certifying a firm based on its 8(a) BD or SDB certification, CDOT must conduct an on-site review of the firm (see Sec. 26.83(c)(1)). If the SBA conducted an on-site review, CDOT may rely on the SBA's report of the on-site review. In connection with this review, CDOT may also request additional relevant information from the firm.
4. Unless CDOT determines, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, CDOT must certify the firm.
5. CDOT is not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state of Colorado unless there is a report of a "home state" on-site review on which CDOT may rely.
6. CDOT is not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that CDOT uses in its DOT-assisted programs or airport concessions.

Ref: 49 CFR part 26.84



Section 4: Responding to Requests from DBE-Certified Firms or the SBA Made Pursuant to the DOT/SBA MOU

1. Upon receipt of a signed, written request from a DBE-certified firm, CDOT will transfer to the SBA a copy of the firm's application package. CDOT will transfer this information within thirty days of receipt of the request.
2. If necessary, the SBA may make a written request to the recipient for additional materials (e.g., the report of the on-site review). CDOT will provide a copy of this material to the SBA within forty-five days of the additional request.
3. CDOT will provide appropriate assistance to SBA-certified firms, including providing information pertaining to the DBE application process, filing locations, required documentation and status of applications.

Ref: 49 CFR part 26.85

Section 5: Denials of Initial Requests for Certification

1. When CDOT denies a firm's application or decertifies it, the firm may not reapply until 12 months have passed from CDOT's action.
2. When CDOT denies a request by a firm, which is not currently certified with CDOT, to be certified as a DBE, CDOT will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.
3. When CDOT denies DBE certification to a firm certified by the SBA, it will notify the SBA in writing. The notification will include the reason for denial.
4. When CDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under 49 CFR part 26.89.

Ref: 49 CFR Part 26.86

Section 6: Removing a DBE's Eligibility

1. In the event CDOT proposes to remove a DBE's certification, CDOT will follow procedures consistent with part 26.87.
2. To ensure separation of functions in a decertification proceeding, CDOT has contracted with an individual outside the Center for Equal Opportunity to serve as hearing officer and decision maker in decertification proceedings. This individual is knowledgeable of the DBE Program and eligibility standards, and is not involved in initial eligibility determinations or any decision to initiate a decertification proceeding.
3. Ineligibility complaints.
 - a) Any person may file with CDOT a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. CDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
 - b) CDOT will review CDOT's records concerning the firm, any material provided by the firm and the complainant, and other available information. CDOT may request additional information from the firm or conduct any other investigation that CDOT deems necessary.
 - c) If CDOT determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, CDOT will provide written notice to the firm that CDOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If CDOT determines that such reasonable cause does not exist, CDOT will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

4. Recipient-initiated proceedings. If, based on notification by the firm of a change in its circumstances or other information that comes to CDOT's attention, CDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, CDOT will provide written notice to the firm that CDOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
5. DOT directive to initiate proceeding.
 - a) If the concerned OA determines that information in CDOT's certification records, or other information available to the concerned OA, provides reasonable cause to believe that a firm CDOT certified does not meet the eligibility criteria of this part, the concerned OA may direct CDOT to initiate a proceeding to remove the firm's certification.
 - b) The concerned OA must provide CDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
 - c) CDOT will immediately commence and prosecute a proceeding regarding as provided by paragraph (6) of this section.
6. Hearing. When CDOT notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraph (3), (4), or (5) of this section, CDOT will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
 - a) In such a proceeding, CDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
 - b) CDOT will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under 49 CFR 26.89, CDOT will provide a transcript of the hearing to DOT and, on request, to the firm. CDOT will retain the original record of the hearing. CDOT may charge the firm only for the cost of copying the record.
 - c) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, CDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as CDOT would during a hearing.



7. Separation of functions. CDOT will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
 - a) CDOT's method of implementing this requirement will be made part of CDOT's DBE program.
 - b) The decision maker will be an individual who is knowledgeable about the certification requirements of CDOT's DBE program and this part.
 - c) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

8. Grounds for Decision. CDOT will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. CDOT may base such a decision only on one or more of the following:
 - a) Changes in the firm's circumstances since the certification of the firm by the recipient that renders the firm unable to meet the eligibility standards of this part;
 - b) Information or evidence not available to CDOT at the time the firm was certified;
 - c) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
 - d) A change in the certification standards or requirements of the Department since CDOT certified the firm; or
 - e) A documented finding that CDOT's determination to certify the firm was factually erroneous.



9. Notice of decision. Following CDOT's decision, CDOT will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of CDOT's decision and of the availability of an appeal to the Department of Transportation under §26.89. CDOT will send copies of the notice to the complainant in an ineligibility complaint or the concerned OA that had directed CDOT to initiate the proceeding.
10. When CDOT decertifies a DBE firm certified by the SBA, CDOT will notify the SBA in writing. The notification will include the reason for denial.
11. Status of firm during proceeding.
 - a) A firm remains an eligible DBE during the pendency of CDOT's proceeding to remove its eligibility.
 - b) The firm does not become ineligible until the issuance of the notice provided for in paragraph (9) of this section.
12. Effects of removal of eligibility. When CDOT removes firm's eligibility, CDOT will take the following action:
 - a) When a prime contractor has made a commitment to use the ineligible firm, or CDOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before CDOT issues the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. CDOT will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to CDOT that it has made a good faith effort to do so.
 - b) If a prime contractor has executed a subcontract with the firm before CDOT has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where CDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after CDOT issued the notice of its ineligibility shall not count toward CDOT's overall goal, but may count toward the contract goal.
 - c) Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, CDOT may continue to count its participation on that contract toward overall and contract goals.



13. Availability of appeal. When CDOT makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

Ref: 49 CFR Part 26.87

Section 7: Appealing Certification Decisions to the USDOT

1. Any firm, including SBA-certified firms applying pursuant to the DOT/SBA MOU, or complainant may appeal CDOT's decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104
Washington, DC 20590
2. CDOT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for CDOT's DOT-assisted contracting (e.g., certify a firm if DOT has determined that CDOT's denial of its application was erroneous).
3. If the person or firm is a complainant in an ineligibility complaint to CDOT (including the concerned OA in the circumstances provided in 49 CFR part 26.87(c)), the person or firm may appeal to the Department if CDOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
4. Pending the Department's decision in the matter, the CDOT's decision remains in effect. The Department does not stay the effect of CDOT's decision while it is considering an appeal.



5. If the company denied eligibility wants to file an appeal, it must send a letter to the Department within 90 days of the date of CDOT's final decision, containing information and arguments concerning why CDOT's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.
 - a) If you are an appellant whose owner's social disadvantage has been rebutted, is a firm which has been denied certification, or whose certification has been removed, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or has removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).
 - b) If you are an appellant other than one described in paragraph (5)(a) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).
6. When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If CDOT is the recipient, CDOT will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, CDOT will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to CDOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
7. The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT OA or other appropriate DOT office; a recipient; or a firm or other private party.

8. As a recipient, when CDOT provides supplementary information to the Department, CDOT shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
 - a) The Department affirms CDOT decision unless it determines, based on the entire administrative record, that CDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
 - b) If the Department determines, after reviewing the entire administrative record, that CDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses CDOT decision and directs CDOT to certify the firm or remove its eligibility, as appropriate. CDOT will take the action directed by the Department's decision immediately upon receiving written notice of it.
 - c) The Department is not required to reverse CDOT's decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
 - d) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to CDOT with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to CDOT for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
 - e) The Department does not uphold CDOT's decision based on grounds not specified in CDOT decision.
 - f) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.



- g) The Department provides written notice of its decision to CDOT, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
 - h) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- 9. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Ref: 49 CFR part 26.89



Section 8: Effect of USDOT Certification Appeal Decisions

1. If CDOT is the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.
2. If CDOT is a recipient to which a DOT determination under 49 CFR 26.89 is applicable, CDOT will take the following action:
 - a) If the Department determines that CDOT erroneously certified a firm, CDOT will remove the firm's eligibility on receipt of the determination.
 - b) If the Department determines that CDOT erroneously failed to find reasonable cause to remove the firm's eligibility, CDOT will expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.
 - c) If the Department determines that CDOT erroneously declined to certify or remove the eligibility of the firm, CDOT will certify the firm, effective on the date of CDOT's receipt of the written notice of the Department's determination.
 - d) If the Department affirms CDOT's determination, no further action is necessary.
3. Where DOT has upheld CDOT's denial of certification to or removal of eligibility from a firm, or recommended the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has recommended reversal of CDOT's denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Ref: 49 CFR Part 26.91

Section 9: Individual Determinations of Social and Economic Disadvantage

The following guidance will be used when there is an application for DBE certification by an individual who is **not** a member of group presumed to be socially and economically disadvantaged.

1. Social Disadvantage:

- a) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control.

Evidence of individual social disadvantage must include the following elements:

- i. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.
- ii. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries.
- iii. Negative impact on entry into or advancement in the business world. CDOT will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
 - Education. CDOT will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.



- Employment. CDOT will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.
 - Business history. CDOT will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.
- b) With respect to paragraph a.1) of this section, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities - especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments) - may be socially and economically disadvantaged.

2. Economic Disadvantage:

- a) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. Information that must be submitted includes:
- i. Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.
 - ii. When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.





- b) In considering diminished capital and credit opportunities, the factors to be examined, related to the personal financial condition of any individual claiming disadvantaged status, will include:
 - i. Personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not.
 - ii. The financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals. This will be used to evaluate the individual's access to credit and capital. The financial profiles to be compared will include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

- c) In considering economic disadvantage, transfers of assets within two years will be considered as following:
 - i. Assets will be attributed to an individual claiming disadvantaged status which have been transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses or some other form of essential support.
 - ii. Assets will not be attributed to an individual claiming disadvantaged status which have been transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.
 - iii. In determining an individual's access to capital and credit, assets that may be considered include ones that the individual transferred within such two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).



SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 1: Compliance Procedures Which Apply to CDOT

1. If CDOT fails to comply with any requirement of this part, CDOT may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned OA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.
2. As provided in statute, CDOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because CDOT has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Ref: 49 CFR Part 26.101

Section 2: Enforcement Actions Under FHWA and FTA

1. Noncompliance complaints. Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned OA's Office of Civil Rights.
2. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109. Complaints under this part are limited to allegations of violation of the provisions of this part.
3. Compliance reviews. The concerned OA may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the OA to initiate a compliance review based on complaints received.
4. Reasonable cause notice. If it appears, from the investigation of a complaint or the results of a compliance review, that CDOT, as a recipient, is in noncompliance with this part, the appropriate DOT office promptly sends CDOT, return receipt requested, a written notice advising CDOT that there is reasonable cause to find CDOT in noncompliance. The notice states the reasons for this finding and directs CDOT to reply within 30 days concerning whether CDOT wishes to begin conciliation.
5. Conciliation:
 - a) If CDOT requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of CDOT's request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
 - b) If CDOT and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed, and CDOT is regarded as being in compliance. The conciliation agreement sets forth the measures CDOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, CDOT remains eligible for FHWA or FTA financial assistance.
 - c) The concerned OA shall monitor CDOT's implementation of the conciliation agreement and ensure that its terms are complied with. If CDOT fails to carry out the terms of a conciliation agreement, CDOT is in noncompliance.



- d) If CDOT does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.
6. Enforcement actions.
 - a) Enforcement actions are taken as provided in this subpart.
 - b) Applicable findings in enforcement proceedings are binding on all DOT offices.

Ref: 49 CFR Part 26.103

Section 3: Enforcement Actions in FAA Programs

1. Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.
2. The provisions of §26.103 (b) and this section apply to enforcement actions in FAA programs.
3. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Ref: 49 CFR Part 26.105



Section 4: Enforcement Actions for Participants in the DBE Program

1. If a firm that does not meet the eligibility criteria of subpart D of this part and attempts to participate in a CDOT's DBE Program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.
2. If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against that firm under 49 CFR part 29.
3. In a suspension or debarment proceeding brought under paragraph (1) or (2) of this section, the concerned OA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
4. The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.
5. The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any program or otherwise violates applicable Federal statutes.

Ref: 49 CFR Part 26.107

Section 5: Confidentiality, Cooperation, and Intimidation or Retaliation

1. CDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Section 24-72-201 through 206, CRS, is the Colorado Open Records Act. Section 24-72-204 requires, or allows, CDOT to protect certain records from inspection or disclosure, including contractor records that are privileged or confidential information, etc. Notwithstanding any contrary provisions of state or local law, CDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter
2. Availability of records.
 - a) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information (5 U.S.C. 552) and Privacy Acts (5 U.S.C. 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
 - b) If CDOT is a recipient, notwithstanding any provisions of Federal or state law, CDOT will not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, CDOT must transmit this information to DOT in any certification appeal proceeding under 26.86 in which the disadvantaged status of the individual is in question.
3. Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

4. Cooperation. All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

5. Intimidation and retaliation. If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Ref: 49 CFR Part 26.109

SUBPART G – APPENDIX TO PART 26

Appendix A: Guidance Concerning Good Faith Efforts

1. When, as a recipient, CDOT establishes a contract goal on a contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
2. In any situation in which CDOT has established a contract goal, part 26 requires CDOT to use the good faith efforts mechanism of this part. As a recipient, it is up to CDOT to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for CDOT to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. 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 DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that CDOT's determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
3. The Department also strongly cautions CDOT against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits CDOT from ignoring bona fide good faith efforts.
4. The following is a list of types of actions which CDOT should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - a) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- c) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- e) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- f) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- g) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

- h) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - i) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- 5. 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 DBE 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.

SUBPART H – EXHIBITS

Exhibit 1: Exemptions and Waiver Request

Exhibit 2: Policy Directive 611.0

Exhibit 3: Prompt Payment Law

Exhibit 4: DBE/UDBE Directory

Exhibit 5: DBE Special Provision

Exhibit 6: CDOT Forms

Exhibit 7: CDOT’s Overall Goal Methodology

Exhibit 8: Emerging Small Business Program

Exhibit 9: 49 CFR Part 26 as Amended on July 16, 2003

- **Appendices A – F Included in Part 26**
- **Appendix B – “Uniform Report of DBE Awards and Payment Forms”**
- **Appendix F – “Uniform Certification Application”**

Exhibit 10: State of Colorado DBE Recertification Forms

Exhibit 11: State of Colorado DBE Change Reporting Form

Exhibit 12: Executive Summary of CDOT’s Disparity Study

Exhibit 13: Revision of Section 109 Retainage and Partial Payments