

October 26, 1999

DISADVANTAGED BUSINESS ENTERPRISE
DEFINITIONS AND REQUIREMENTS

1. Definitions and Procedures - For this project, the following terms are defined:
 - A. Disadvantaged Business Enterprise (UDBE). A small business concern that is certified as being:
 1. At least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
 2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 3. "Socially and Economically Disadvantaged individuals" means those individuals who are citizens or lawfully admitted permanent residents of the United States and who are:
 - (a) Minorities or individuals found by the Small Business Administration pursuant to Section 8(a) of the Small Business Act to be disadvantaged.
 - (b) Individuals found by the Office of Certification at the Department of Regulatory Agencies to be socially and economically disadvantaged.
 - B. UDBE Joint Venture. An association of two or more businesses formed to carry out a single business enterprise for profit for which purposes they combine their property, capital, efforts, skills and knowledge. UDBE joint ventures must be certified as a joint venture. The UDBE percentage of the joint venture will be determined at the time of certification.
 - C. Underutilized UDBE (UDBE). A firm which meets the definition of Underutilized Disadvantaged Business Enterprise (UDBE) based on the findings and recommendations of CDOT's Disparity Study concerning consultants on CDOT projects and is eligible to meet the contract goal as defined in the paragraph titled "Contract Goal." The Colorado Transportation Commission adopted Resolution No. 966 and set a 10.93% overall annual goal for the remainder of FFY 2001 and for FFY 2002.
 - D. Contract Goal. The goal for UDBE participation that the Department determines should appropriately be met by the selected consultant, based on the type of work included in each project and the availability of UDBEs capable of performing such work. The Contract goal will be the percentage stated in the invitation for consultant services and in the project documents.
 - E. Certification as a UDBE by the Department
 1. Any small business may apply to the Department of Regulatory Agencies (DORA) for status as a UDBE. Application shall be made on forms provided by the DORA for certification of UDBEs. However, only work contracted or subcontracted to UDBEs that also qualify as UDBEs and independently performed by UDBEs shall be considered toward contract goals as established elsewhere in these specifications.

Addendum No. 2
January 25, 2008

2. It shall be the UDBE applicant's responsibility to submit applications so that the DORA has sufficient time to render decisions. The DORA will review applications in a timely manner but is not committed to render decisions about a firm's UDBE status within any given period of time.
 3. The Department will prepare, publish or make available from time to time a list of UDBE contractors, consultants, vendors and suppliers for the purpose of providing a reference source to assist any consultant in identifying UDBEs and UDBEs. Consultants will be solely responsible for verifying the Certification of UDBEs they intend to use prior to submitting a Statement of Interest (SOI.) The Business Programs Office in the Center for Equal Opportunity will maintain a current list of eligible UDBEs. The UDBE list is also available at:
<http://www.dot.state.co.us/business/design/consultantmgmt/>
2. Selection of UDBEs by Consultant:
 - A. Consultants shall exercise their own judgments in selecting any subconsultant to perform any portion of the work.
 3. Requirements
 - A. The use of UDBEs is an evaluation factor for consultant selection under Section 24-30-1403 (2) CRS. All Consultants shall submit with their proposals a list of the names of their UDBE subconsultants to meet the contract goal.
 - B. If the Consultant proposes to voluntarily use any non-UDBEs on the project, the Consultant shall also submit the names of those UDBEs. However, the non-UDBEs will not be used to meet the UDBE goal for the project.
 - C. Evaluation points will be awarded for UDBE participation during the Statement of Interest (SOI) scoring. A maximum of 5 evaluation points will be awarded for UDBE participation during the SOI scoring. If the consultant doesn't submit sufficient UDBE participation to meet the project goal, they may be awarded from 0 to 4 points, based on the amount of UDBE participation they submit.
 - D. The selected consultant must use the UDBE firms named (if any) in the Statement of Interest for the items of work described. The replacement of a named UDBE firm will be allowed only as provided for in (6) of the UDBE Definitions and Requirements. Failure to comply may constitute grounds for default and termination of the Contract.
 - E. Consultant's UDBE Obligation.
 1. The Consultant submitting a Statement of Interest and a Work Plan on consultant projects advertised by the Department agrees to ensure that UDBEs, as defined in this special provision, have the maximum opportunity to participate in the performance of contracts or subcontracts. The prime Consultant shall not discriminate on the basis of race, color, national origin, or sex in the selection and bidding process or the performance of contracts.
 2. To ensure that UDBEs are offered maximum opportunity to participate in the performance of contracts, it is the responsibility of the prime Consultant to offer and to provide assistance to UDBEs related to the UDBE performance of the subcontract. However, the UDBE must independently perform a commercially useful function on the project, as described in F(4) below.
 - F. Counting UDBE Participation Toward Goals

Addendum No. 2
January 25, 2008

1. Once a firm has been certified as a UDBE, the total dollar amount of the contract awarded to the firm shall be counted toward the contract goal as explained below, and as modified for the project in the project special provisions titled "Contract Goal."
2. The actual dollar total of a proposed subcontract, supply or service contract with any UDBE firm shall be reported to the Department in the Consultant's Cost Proposal.
3. The eligibility of a proposed UDBE subconsultant will be finally established based on the firm's status at the time the contract is signed. If a firm becomes certified as a UDBE during performance under a fully executed contract with CDOT but prior to the UDBE performing any work, then 100% of the work performed by the firm under that contract may be claimed as eligible work. No work performed by a UDBE firm can be counted toward UDBE participation prior to the firm receiving certification as a UDBE.
4. The Consultant may count toward its contract goal only that percentage of expenditures to UDBEs which independently perform a commercially useful function in the work of a contract. A UDBE is considered to be performing a commercially useful function by actually performing, managing, and supervising the work involved. To determine whether a UDBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, work performed solely by the UDBE, industry practices, and other relevant factors.
5. A UDBE may enter into subcontracts consistent with normal industry practices. If a UDBE subcontracts over 51% of the work of the Contract the UDBE shall be presumed not to be performing a commercially useful function. The UDBE may present evidence to rebut this presumption to the Department.
6. The Consultant may count toward its contract goal the percentage of expenditures for materials and supplies obtained from UDBE suppliers (regular dealers) and manufacturers specifically for use on the project, provided that the UDBEs assume the actual and contractual responsibility for and actually provide the materials and supplies.
 - a. The Consultant may count 100 percent of its expenditures to an UDBE manufacturer if the purchased items are to be used on the project. A UDBE manufacturer is a certified firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant.
 - b. The Consultant may count 60 percent of its expenditures to UDBE suppliers that are not manufacturers, provided that the UDBE supplier performs a commercially useful function in the supply process. A supplier is a certified firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a supplier the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A supplier in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or suppliers within the meaning of this section.
 - c. The Consultant may count toward its UDBE goal the following expenditures to UDBE firms that are not manufacturers or suppliers:

Addendum No. 2
January 25, 2008

1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
2. The fees charged for delivery of materials and supplies required to a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a supplier of the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Determination of goal achievement

To determine the goals achieved under this Contract, the UDBE participation shall be divided by the original prime Contract amount and multiplied by 100 to determine the percentage of performance. The Consultant shall maintain records of payment that show amounts paid to all UDBEs and UDBEs. Upon completion of the project, the Consultant shall submit a list of all UDBEs (both UDBEs and other UDBEs) that participated in this Contract, the subcontract tier number of each, and the dollar amount paid to each. The Consultant shall certify the amount paid, which may be audited by the Department. When the participation by UDBEs is less than the Consultant committed to the Department, the Consultant shall submit a statement to CDOT that indicates the amount of participation and gives reasons why it was different from the Consultant's commitment.

6. Replacement of UDBEs used to meet the contract goal

- A. Based upon a showing of good cause the Consultant may request that a UDBE named in the Consultant's Statement of Interest be replaced with another UDBE pursuant to the terms and conditions of this special provision. Replacements will be allowed only with prior written approval of the Department.
- B. If a replacement is to be requested prior to the time that the named UDBE has begun to effectively prosecute the work under a fully executed subcontract, the Consultant shall furnish to the Department the following:
 1. Written permission of the named UDBE. Written permission may be waived only if such permission cannot be obtained for reasons beyond the control of the Consultant.
 2. A full written disclosure of the circumstances making it impossible for the Consultant to comply with the condition of award.
 3. Documentation of the Consultant's assistance to the UDBE named in the Consultant's Statement of Interest.
 4. Copies of any pertinent correspondence and documented verbal communications between the Consultant and the named UDBE.

Addendum No. 2
January 25, 2008

5. Documentation of the Good Faith Efforts in finding a replacement UDBE and the results of the efforts. It is within the control of the Consultant to locate, prior to award, UDBEs that offer reasonable prices and that could reasonably be expected to perform the work. For this reason, increased cost shall not, by itself, be considered sufficient reason for not providing an in-kind replacement.
- C. In the event a UDBE begins to prosecute the work and is unable to satisfactorily complete performance of the work, the Consultant shall furnish to the Department the following:
1. Documentation that the subject UDBE did not perform in a satisfactory manner.
 2. Documentation of the Consultant's assistance to the UDBE prior to finding the UDBE in default.
 3. A copy of the certified letter finding the UDBE to be in default or a letter from the UDBE stating that it cannot complete the work and it is turning the work back to the Consultant.
 4. Copy of the contract between the Consultant and the UDBE, plus any modifications thereto.
7. Sanctions
- A. It is the obligation of the Consultant to provide UDBE firms with the maximum opportunity to participate in the performance of the work.
 - B. It is the responsibility of UDBE firms to perform their work in a responsible manner fully consistent with the intent of the UDBE program, and in substantial compliance with the terms and conditions of these UDBE definitions and requirements.
 - C. UDBE firms which fail to perform a commercially useful function as described in subsection 4(E) of these UDBE definitions and requirements or operate in a manner which is not consistent with the intent of the UDBE program may be subject to revocation of certification.
 - D. A finding by the Department that the Consultant has failed to comply with the terms and conditions of these UDBE definitions and requirements may constitute sufficient grounds for default and termination of the Contract.

Addendum No. 2
January 25, 2008

COLORADO DEPARTMENT OF TRANSPORTATION CERTIFICATE OF PROPOSED DBE PARTICIPATION FOR PROJECT SPECIFIC (PS) CONSULTANT CONTRACTS	CMS #:	Anticipated Location(s):
	Project #:	Sheet: _____ of _____
	Contract DBE Goal: _____ %	Will Your DBE % Meet The Goal (box C)? <input type="checkbox"/> YES <input type="checkbox"/> NO

Instructions For Prime Consultant:

- An officer of the consultant must complete and submit an original copy of this form as part of the **Commendation Section** of your PS contract Statement Of Interest (SOI).
- Submit a separate CDOT Form #1331 for each proposed DBE.
- Attach a signed *Letter of Acceptance* and copy of DBE certificate from each DBE firm.
- Retain a photocopy for your records.

(NOTE: See 49 CFR part 26.55, and the *DBE Definitions and Requirements* section of the contract, for further information concerning counting DBE participation toward the contract's DBE goal.)

NAME OF DBE SUBCONSULTANT	ITEMS OF WORK TO BE PERFORMED BY DBE SUBCONSULTANT

REQUIRED ATTACHMENTS: Letter of Acceptance DBE certificate

A) What percentage of the overall contract is this proposed subcontract, supply/vendor contract, OR service/broker contract? NOTE: Calculate % based on actual subcontractor dollars and not prime contract prices. Only report % amounts that are eligible for counting toward the contract goal (See <i>DBE Definitions and Requirements</i> in contract).	A>	%
B) What is the total percentage value of proposed DBE participation from prior sheets/forms?	B>	%
C) What is the accumulative percentage value of the overall contract that is committed to DBEs? C = [A + B]	C>	%

I certify that:

- my company has accepted a proposal from the DBE subconsultant named above.
- my company has notified the proposed DBE subconsultant of the commitment % of work (*Letter of Acceptance is attached*).
- my company's use of the proposed DBE subconsultant for the items of work listed above is a condition of the contract award.
- my company will not use a substitute DBE subconsultant for the proposed DBE subconsultant's failure to perform under a fully executed subcontract, unless my company complies with the *DBE Definitions and Requirements* section of the contract.
- In addition, if my company does not meet the intended DBE goal for this contract and is unable to document adequate good faith efforts, I understand that my company will receive a poor contract performance rating from CDOT, which will negatively impact the scoring of our Statements Of Interest (SOI) on future CDOT contracts.

I declare under penalty of perjury in the second degree, and any other applicable state or federal laws, that the statements made on this document are true and complete to the best of my knowledge.

COMPANY NAME:	DATE: _____ / ____ / ____
COMPANY OFFICER SIGNATURE:	TITLE: _____

DBE CONSULTANT WORK CODES

Addendum No. 2

January 25, 2008

UCP/DBE WORK CODE	WORK CODE DESCRIPTION	% OF PROJECT
40000	Architecture	
40100	Construction Management and Related Services	
40101	Bridge and Tunnel	
40102	Institutional Buildings	
40103	Highway and Street	
40104	Water, Sewer, Pipeline	
40200	Drafting/CAD Services	5%
40300	Engineering-Acoustical	
40400	Engineering-Aerospace	
40500	Engineering-Civil	10%
40600	Engineering-Electrical	
40700	Engineering-Environmental	5%
40800	Engineering-Geological	
40900	Engineering-Geotechnical	5%
41000	Engineering-Hydrology/Hydraulics	5%
41100	Engineering-Mechanical	
41200	Engineering-Roadway Design	30%
41300	Engineering-Structural	30%
41400	Engineering-Transportation	
41500	Inspection Services	
41600	Land Surveyors	5%
41700	Landscape Architecture	
41800	Soils Testing	5%
41900	Traffic Studies and Plans	
42000	Urban Planning/Design and Related Services	
42001	Preliminary Studies	
42002	Airspace or Route Studies	
42003	Activity Studies	
42004	Economic Impact Studies	
42005	Location or Route Studies	
42006	Feasibility Studies	
42007	Quality Control Services	
42008	Research	
42009	Vehicle Traffic Access	

Consultant Audits

As per Exhibit H of the contract between CDOT and the Local Agency:

Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursement for costs is limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six (6) to fifteen (15) percent of the total direct and indirect costs.

CDOT has recent pre-negotiation audits for most consultants. You may do your own audit or request to use CDOT's audit information. If you choose to use CDOT's audit information, ask your selected consultant to send an e-mail to CDOT with the e-mail address of the local agency they want their audit information released to.

CDOT Audit information contact:

Michael.J.Kennedy@dot.state.co.us
303-512-4369

The audit evaluates the following items:

1. Verify that proposed rates/hour match what employees are actually paid.
2. Verify that annual salary increases do not exceed the contract maximum of 10%/year (except for promotions).
3. Verify that all FAR unallowable costs (i.e. political contributions, bad debts) are removed from the indirect cost rate calculation.
4. Compare proposed rates/hour to industry standard rates/hour to determine if they are fair and reasonable.
5. Recommend which proposed other direct costs should be billed separately and which are included in the indirect cost rate.

ATTENTION CONSULTANTS - NOTICE

In February, 1999 the U. S. Department of Transportation (USDOT) revised its Title 49, Code of Federal Regulations, Parts 23 and 26, concerning its continuing requirement that all States implement a Disadvantaged Business Enterprise (DBE) Program for all federally-funded contracts. That federal requirement applies to all section 24-30-1401, C.R.S., federally-funded professional services consultant agreements executed by CDOT.

In response to that federal regulation, in June, 2001 the Colorado Transportation Commission adopted Resolution No. 966. Among other things, Resolution No. 966 established a new DBE goal setting process for professional services consultant contracts, in order to more narrowly tailor CDOT's DBE program to conform with the results of the 2000 Statewide Disparity Study. That Disparity Study found that all DBEs will be considered to be UDBEs.

Accordingly, CDOT will now set individual project goals on consultant contracts for all UDBE professional services consultants/subconsultants, based upon the type of work included in each project and the availability of UDBEs capable of performing such work. CDOT will use a consultant's proposed use of UDBE participation in the project work as an evaluation criterion in the selection of a consultant for the project.

Project specific DBE goals will be set by the appropriate Regional EEO Representative or Headquarters DBE Program Manager, using a process similar to the one currently used to establish DBE goals for UDBEs on highway construction projects.

As a result, all CDOT professional services projects advertised after June, 2001 shall contain individual project UDBE goals conforming to Resolution No. 966, and each selected consultant shall be required by CDOT's project contract to provide the UDBE participation contained in its proposal. Please refer to the section in the Statement of Interest package that describes the new DBE goals and requirements.