

HI 1.2/M66/1980

C.)

**MINORITY**

**BUSINESS**

**ENTERPRISE**

**A Program of  
the  
COLORADO  
DEPARTMENT  
of  
HIGHWAYS**

**July 31, 1980**

**DATE**

COLORADO STATE PUBLICATIONS LIBRARY local  
HI1.2/M66/1980  
/Minority business enterprise : a progra  
  
3 1799 00003 1575

RECEIVED

OCT 01 1980

COLORADO STATE LIBRARY  
State Publications Depository

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

<b>COLORADO DEPARTMENT OF HIGHWAYS</b>		<b>POLICY DIRECTIVE</b>	
		APPLICABLE DIVISION	ALL
SUBJECT	MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM		NUMBER 611
EFFECTIVE AUG. 1, 1980	SUPERSEDES 610 AUG. 1, 1980	ORIGINATING OFFICE OFFICE OF MANAGEMENT & BUDGET	DISTRIBUTION 28

PURPOSE

The purpose of this directive is to set forth the objectives for implementation of a Minority Business Enterprise Program (MBE) by the Colorado Department of Highways. The intent of this program will be to increase MBE participation in all federal aid and state highway construction projects performed under bid contract by the Department.

AUTHORITY

Executive Director  
49 C.F.R., Part 23

APPLICABILITY

Federal aid and state highway construction projects performed under bid contract by all Divisions, Districts and Branches of the Colorado Department of Highways.

POLICY

It is the policy of the Colorado Department of Highways to support the fullest possible participation of firms owned and controlled by minorities and women (MBE's) in the highway construction program within the State of Colorado. This will include assisting MBE's throughout the life of contracts in which they participate.

The responsibility for the administration of this program is hereby assigned to the Director of the Office of Management and Budget who is hereby designated as MBE Liaison Officer. The MBE Liaison Officer shall report directly to the Executive Director and is hereby granted full authority and responsibility for developing, managing and implementing the MBE program on a day to day basis; for carrying out technical assistance activities for MBE's; and for disseminating information on available business opportunities so that MBE's are provided an opportunity to bid on highway construction contracts.

Each District Engineer shall designate one (1) certified employee to be responsible for the effective implementation of the MBE program within the District. These employees will be responsible to the appropriate District Engineer but will cooperate fully with the MBE Liaison Officer to assure that the objectives of the MBE program are met.

The objectives of this program will be as follows:

- 1) Insure that MBE's have a maximum opportunity to compete for contracts and subcontracts.
- 2) Encourage contractors and the Department to use banks owned and controlled by minorities and women.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

- 3) Publish a comprehensive MBE directory to facilitate identifying MBE's with capabilities relevant to highway contracting requirements and to particular solicitations.
- 4) Ascertain eligibility of MBE's and joint ventures involving MBE's to insure that the MBE program benefits firms owned and controlled by minorities and women.
- 5) Establish percentage goals for the dollar value of work to be awarded to MBE's. Both overall annual goals for the MBE program and contract goals for specific prime contracts with subcontracting possibilities shall be established. Separate overall goals and contract goals shall be established for MBE firms owned or controlled by minorities, and for MBE firms owned and controlled by women. Note: Overall annual goals shall be recommended to the Highway Commission for adoption before they are submitted to the U.S. Department of Transportation for approval.
- 6) Establish solicitation, award and contract administration procedures that will insure that goals are met.

### IMPLEMENTATION

This policy shall be effective immediately. Procedures adopted to insure the effective implementation of this policy shall be contained in a written MBE program to be developed and maintained for the Colorado Department of Highways by the MBE Liaison Officer.

\_\_\_\_\_  
EXECUTIVE DIRECTOR

PAGE 2 OF 2

\_\_\_\_\_  
SECRETARY, HIGHWAY COMMISSION

Date: July 31, 1980

Page ii

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

RES. NO.  
\_\_\_\_\_

WHEREAS, Policy Directive No. 611, Minority Business Enterprise (MBE) Program, provides that overall annual percentage goals for the dollar value of the work to be awarded to MBE firms owned and controlled by minorities, and for MBE firms owned and controlled by women, be recommended to the Commission for adoption; and

WHEREAS, the Department developed a formal methodology for establishing said goals; and

WHEREAS, the Commission adopted recommended goals for Fiscal Year 1981 by Resolution No. 1030; and

WHEREAS, the goals were duly published for public comment for information only; and

WHEREAS, during this public comment period the Minority Association of Contractors and the Colorado Contractors Association, Inc. met with the Department on several occasions; and

WHEREAS, the outstanding cooperation displayed during these meetings contributed heavily toward the development of a final MBE Program that is expected to be widely accepted by the industry; and

WHEREAS, as a result of the public comment it has been determined appropriate to revise the goals; and

WHEREAS, it is now recommended that the appropriate overall annual percentage goals for Fiscal Year 1981 be:

MBE (Minority)	15%	MBE (Women)	5%
----------------	-----	-------------	----

WHEREAS, it is also recommended that revised program procedures such as set-asides be considered only if it becomes apparent that actual performance will fall short of either goal by more than five (5) full percentage points.

NOW, THEREFORE, BE IT RESOLVED, that the Highway Commission hereby adopts the above recommended goals for Fiscal Year 1981.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### TABLE OF CONTENTS

	<u>Page</u>
Policy Directive No. 611	i & ii
Goals - FY 1981	iii
Section 1 - Purpose	1
Section 2 - Effective Date	1
Section 3 - Authority	1
Section 4 - Discrimination	1
Section 5 - Agreement with General Requirements	1 - 2
Section 6 - Definitions	2 - 5
Section 7 - MBE Program Components	5
(a) Policy	5 - 6
(b) MBE Liaison Officer	6 - 7
(c) Procedures to Ensure MBE's Equitable Opportunity to Compete for Contract and Subcontracts	7 - 8
(d) Minority and Women Owned Banks	8
(e) MBE Directory	8 - 9
(f) Procedures to Ascertain the Eligibility of MBE Firms and Joint Ventures	9 - 10
(g) Percentage Goals	10 - 13
(h) Procedures to Require that Participating MBE Firms are Identified by Name, by Competitors for Contracts	13
(i) Selection Criteria to Ensure that Prime Contracts are Awarded to Competitors that meet MBE Goals	13 - 14
(j) Method the State will Require Contractors and Sub- contractors to Comply with Applicable MBE Requirements	14 - 15
(k) Procedures of Set Asides	15

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### TABLE OF CONTENTS

	<u>Page</u>
Section 8 - Supplemental Procedures	15
Section 9 - Method of Counting MBE Participation Toward MBE Goals	15 - 16
Section 10 - Records and Reports	16
Appendix A - 49 C.F.R., Part 23	17 - 27
Appendix B - Bid Conditions	28 - 34
Appendix C - Forms	35 - 41
Appendix D - Staffing Pattern	42

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### SECTION 1 - GENERAL PURPOSE:

The Colorado Highway Department recognizes the need to take affirmative action to ensure that Minority Business Enterprises controlled by minorities and women, hereafter referred to as MBE firms, shall be given maximum opportunity to participate in the performance of Colorado Department of Highways (CDOH) federal aid and state highway construction bid contracts. The Department of Transportation regulations published in the Federal Register Volume 45 No. 63 dated March 31, 1980 establishes a requirement that all recipients of Federal aid funds establish a Minority Business Enterprise Program. These regulations that apply to both federal aid construction and non-construction contracts will supersede the requirements of FHPM 6-4-1-8.

### SECTION 2 - EFFECTIVE DATE:

This program will be effective August 1, 1980, subject to FHWA approval.

### SECTION 3 - AUTHORITY FOR THE MBE PROGRAM:

This program has been established under the authority of the Executive Director and Policy Directive No. 610; in accordance with DOT, 49 C.F.R., Part 23.

### SECTION 4 - DISCRIMINATION PROHIBITED:

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance on any contract covered by this part, on the grounds of race, color, natural origin, sex, age or handicap.

### SECTION 5 - AGREEMENT WITH GENERAL REQUIREMENTS:

The Department hereby agrees to abide by the "Policy" and "MBE Obligation" paragraph (a)(1) and (a)(2) of Section 23.43, 49 C.F.R., Part 23. These statements shall be included in subsequent financial agreements and in all

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

subsequent agreements between the Department and any subrecipients and in all subsequent DOT assisted contracts between the Department or subrecipients and any contractors. The statements shall be included in the Bid Conditions entitled "Minority Business Enterprise" for all federal aid and state projects. (Appendix 2), hereinafter referred to as the Bid Conditions.

### SECTION 6 - DEFINITIONS:

"Affirmative Action" means taking specific steps to eliminate discrimination and its effects, to insure non-discriminatory results and practice in the future, and to involve MBE firms fully in contracts and programs funded by DOT.

"Compliance" means the condition existing when a recipient or contractor has met and implemented the requirements of this program.

"Contract" means one who participates, through a contract or subcontract, in any program covered by this part, and includes leasees.

"Federally Assisted Contracts" means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT financial assistance or any contract or modification of a contract between a recipient and a leasee.

"Financial Assistance" means financial aid provided by DOT to a recipient but does not include a direct federal contract.

"Joint Venture" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

"Leasee" means a business or person that leases, or is negotiating to lease property from a recipient for the purpose of operating a transportation -



# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

related activity or for the provision of goods or services to the facility or the public facility.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- (a) Black - a person having origins in any of the black racial groups of Africa.
- (b) Hispanic - a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Carribean Islands, regardless of race.
- (c) Asian American - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (d) American Indian and Alaskan Native - a person having origins in any of the original peoples of North America.
- (e) Members of other groups or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C., 637 (a)).
- (f) MBE - Minority Business Enterprise - a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. Owned and controlled means a business:
  - (1) Which is at least 51 per centum owned by one or more minorities or women, or in case of publicly owned business at least 51 per centum of the stock of which is owned by one or more minorities or women; and

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

- (2) Whose management and daily business operations are controlled by one or more such individuals.

"MBE Coordinator" means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

"MBE Supportive Service Consultant" means a consultant hired to assist the Highway Department in programs to increase MBE participation in highway construction, i.e., bonding, prequalification, finance, bidding, training, scheduling and bookkeeping.

"MBE Advisory Committee" means a committee formed to advise the Department of Highways on MBE matters including appropriate overall annual goals and program revisions. Initial membership will include representatives of the Department, the Colorado Contractors Association, Inc. and the Minority Association of Contractors. Membership may be expanded at the discretion of the committee.

"MBE Contract Goals Committee" means a committee formed to advise the Department of Highways on appropriate contract goals. Initial membership will include two representatives each of the Department, the Colorado Contractors Association, Inc. and the Minority Association of Contractors. Membership may be expanded at the discretion of the committee.

"Non-Compliance" means the condition existing when a recipient or contractor has failed to implement the requirements of this program.

"Program" means any undertaking by a recipient to use DOT financial assistance and includes the entire activity, any part of which receives DOT financial assistance.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

"Recipient" means any entity, public or private, to whom DOT financial assistance is extended, directly or through any recipient for any program.

"Set-Aside" means a technique which limits consideration of bids or proposals to those submitted by MBE's.

### SECTION 7 - MBE PROGRAM COMPONENTS:

#### (A) Policy Statement:

It is the policy of the Colorado Department of Highways to support the fullest possible participation of firms owned and controlled by minorities and women in federal aid and state highway construction bid contracts within the State of Colorado. This will include assisting MBE's throughout the life of contracts in which they participate.

The policy for this program and the overall goals are included in this program . (See pages i through iii).

#### Policy Objectives:

- (a) To insure that MBE's have an equitable opportunity to compete for contracts and subcontracts.
- (b) To encourage the use of banks owned and controlled by minorities and women.
- (c) To publish a comprehensive MBE Directory to facilitate identifying MBE's with capabilities relevant to highway contracting requirements and to particular solicitations.
- (d) Ascertain eligibility of MBE's and joint ventures involving MBE's to insure that the MBE program benefits only firms owned and controlled by minorities and women,

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

- (e) To establish reasonable percentage goals for the dollar value of work to be awarded to MBE's. Both overall annual goals for the MBE program and contract goals for specific prime contracts with subcontracting possibilities shall be established.
- (f) To establish solicitation, award and contract administration procedures that will insure either that goals are met or that sufficient reasonable efforts are taken to meet goals.

(B) MBE Liaison Officer:

The Director of the Office of Management and Budget has been designated the MBE Liaison Officer. The MBE Liaison Officer shall report directly to the Executive Director and is hereby granted full authority and responsibility for developing, managing and implementing the MBE program on a day to day basis; for carrying out technical assistance activities for MBE's; and for disseminating information on available business opportunities so that MBE's are provided an opportunity to bid on highway construction contracts. Staffed laterally under the MBE Liaison Officer will be the External EEO Supervisor and the Internal EEO Supervisor. The Internal EEO Supervisor will be responsible for internal affairs and Title VI. The External EEO Supervisor will have the responsibility for the MBE and OJT Supportive Services, contract compliance, external youth opportunity program (EYOP) and labor compliance. Each District Engineer shall designate one (1) full time employee to be responsible for the effective implementation of the MBE program within the

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

District. These employees will be responsible to the appropriate District Engineer and will cooperate fully with the MBE Liaison Officer to assure that the objectives of the MBE program are accomplished.

(See staffing Appendix D).

Development, management and implementation of the MBE program will be directed by the MBE Liaison Officer. Primary work elements will be performed by an MBE Supportive Services Consultant under annual contract with the Department.

(C) Procedures to Ensure MBE's Equitable Opportunity to Compete for Contracts and Subcontracts:

- (1) All solicitations for bid will be advertised in regular newspaper publications that are likely to yield both MBE, prime and sub-contractors. Additional days for advertisement and submittal of a proposal may be allowed.
- (2) The Department will utilize the MBE Supportive Services Consultant and other financial agencies to help MBE's in bonding. At present Colorado Law only allows for waiving bond on contracts not exceeding \$10,000.
- (3) Technical assistance in bid take off, scheduling, cash flow, etc. will be offered to MBE's by the Highway Department and the MBE Supportive Services Consultant.
- (4) When a contractor becomes prequalified with the Highway Department, he is issued a copy of Specifications and is added to the mailing list for upcoming projects. Any interested firm or party may request to be placed on the

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

mailing list for upcoming projects. The MBE Supportive Services Consultant will contact each MBE for their interest in bidding certain projects with items related to their specialties.

(D) Minority and Women Owned Banks:

The Department will encourage prime contractors and subcontractors to use banks owned and controlled by minorities and women. The State of Colorado presently deposits the maximum allowed by law in MBE banks.

(E) MBE Directory:

The Highway Department, in conjunction with the MBE Supportive Services Consultant, will publish a practical directory of MBE firms with addendums each six (6) months. The directory will include names, addresses, telephone numbers, contact person, bonding capabilities, areas of availability, type of work offered, equipment and experience.

This directory shall be made available to all bidders and contractors and shall specify the firms that the Department of Transportation, the Colorado Department of Highways, the Small Business Administration, etc. have determined to be eligible MBE's. Concentrated efforts will be made to insure that this directory includes all MBE's that can reasonably be expected to compete for highway contracts. The directory will contain a section of prequalified, eligible highway contractors, with an addendum published each six (6) months verifying whether or not MBE firms have responded to requests for participation within a

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

twelve (12) month period. MBE firms that have not responded and that do not otherwise indicate a willingness to become "active" will be listed as "inactive".

The MBE Supportive Services Consultant will, at least quarterly, correspond with the Minority Association of Contractors, the Colorado Contractors Association, Inc. and other appropriate minority and female agencies, for recommendations as to how the directory might be improved.

(F) Procedures to Ascertain the Eligibility of MBE's and Joint Ventures:

The Department will utilize DOH Form 892 and DOH Form 893 questionnaires (see Appendix C) to verify the eligibility of minority and female contractors and joint ventures. The MBE Supportive Services Consultant will be utilized to:

- (a) Initiate the certification process by contacting all appropriate agencies to determine whether or not a certified list of MBE firms exist.
- (b) Contact non-certified MBE firms (contractors, suppliers, and vendors) that may be interested in entering the highway construction program.
- (c) Assist them in filling out the appropriate forms and gather any additional information that may be helpful in future evaluation of the MBE program.
- (d) Implement a review process to insure that the MBE program benefits only firms owned and controlled by minorities and women. The MBE Liaison Officer shall grant minority status

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

to MBE's and joint ventures involving MBE's based on reviews performed by, and certifications of eligibility furnished by, the current Supportive Services Consultant. Completed DOH Forms No. 892 "Schedule A" and 893 "Schedule B" that are included in this program as part of the Bid Conditions shall be submitted to the MBE Liaison Officer as part of the permanent record justifying granting of minority status. The Department will normally accept certifications made by other DOT recipients. MBE subcontractors that are unable to perform successfully will be replaced according to the procedure contained in the Bid Conditions.

- (e) Follow-up at least every six (6) months to verify the current status of eligibility and report such findings to the Department of Highways.

DOH Form 892 "Schedule A" and DOH Form 893 "Schedule B" that are included in this program as part of the Bid Conditions shall be submitted to the MBE Liaison Officer as part of the permanent record justifying granting of minority/female status. The MBE Liaison Officer will note acceptance on the DOH Form 892 and DOH Form 893. Any contractor found falsifying records or procedures to gain minority status for the highway projects will be placed in non-compliance status and debarment proceedings initiated.

- (G) Percentage Goal:

The Department shall establish two (2) types of MBE goals:

- (a) Overall annual percentage goals shall be established for



# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

total MBE participation in federal aid and state highway construction work performed under bid contracts by the Department. Separate goals shall be set for firms owned and controlled by minorities and firms owned and controlled by women.

Overall goals shall be established as follows:

- (i) The percent participation of MBE's during a preceding 11 month period of time shall be determined.
- (ii) The MBE Advisory Committee will submit recommended overall annual goals to the Department with a written report evaluating prior performance and stating conditions likely to result in either increased or decreased MBE participation during the next year. The number and growth of MBE firms expected to be active in the program, the nature of work planned by the Department for the year, and the amount and nature of the work planned by other agencies/owners will be among the conditions to be considered.
- (iii) The Department will review the report and goals recommended by the MBE Advisory Committee; revise the goals if considered necessary; and submit the proposed goals, along with justification supporting any revisions to the Highway Commission for adoption.

At the time the Department submits its overall goals to the FHWA for approval, the Department shall publish a notice announcing these goals,

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the Department for 30 days following the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications and shall state that the comments are for informational purposes only.

(b) Contract goals shall be established for specific prime contracts with MBE joint venture and subcontracting possibilities. Separate contract goals shall be set for MBE firms owned and controlled by minorities and MBE firms owned and controlled by women as follows:

- (i) Districts shall identify items of MBE work for which they reasonably expect two (2) or more firms to compete. This information will be made available to the MBE Liaison Officer and the "MBE Contract Goals Committee" using DOH Form No. 717.
- (ii) The MBE Supportive Services Consultant will also furnish this same information using DOH Form No. 717 to the MBE Liaison Officer and the "MBE Contract Goals Committee."
- (iii) The "MBE Contract Goals Committee" will submit recommended contract goals to the MBE Liaison Officer.
- (iv) The MBE Liaison Officer will review these forms, the recommendation of the "MBE Contract Goals Committee" and will furnish the forms, covered with his recommendation

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

to the Chief Engineer of the Colorado Division of Highways for final decision. The recommendation of the MBE Liaison Officer will include current statistics as to how effectively the Department is progressing toward meeting its overall goals.

(c) A quarterly MBE progress report will be prepared and submitted to the Executive Director by the MBE Liaison Officer.

(H) Procedures to Require that Participating MBE's are Identified by Name, by Competitors for Contracts:

Pre-award procedures are covered in the Bid Conditions contained herein as Appendix B. See also DOH Forms 714 and 715.

Solicitations issued by the Department for contracts that provide opportunities for MBE participation shall include goals for the use of firms owned and controlled by minorities and firms owned and controlled by women. Bidders submitting proposals for contracts on which goals have been established shall be required to comply with the Bid Conditions. Language to be included in solicitations will be as follows: Contract goals for the participation of MBE firms in this contract have been established as follows:

MBE (Minorities) \_\_\_\_\_ Percent

MBE (Women) \_\_\_\_\_ Percent

(I) Selection Criteria to Ensure that Prime Contracts are Awarded to Competitors that Meet MBE Goals:

The Department shall recommend award according to the procedure established in the Bid Conditions. The purpose of the solicitation language

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

and Bid Conditions governing award will be to assure to the maximum extent practical, that all potential bidders will have been made aware of the contract goals; and that contracts will be awarded to the lowest responsible bidder that will meet the goals or that will demonstrate reasonable efforts to meet goals. The MBE Liaison Officer will develop a written annual review program that will include provisions for periodic reviews during the performance of contracts to insure that all obligations concerning MBE participation are met.

(J) A Description of Methods by which the State will Require Contractors and Subcontractors to Comply with Applicable MBE Requirements:

The Department will not be relieved of any responsibility assumed under this program by allowing another public entity to administer federal aid contracts. Agreements with entities providing that the entity will administer federal aid contracts shall stipulate that either the Department's procedures as contained in this program will be adopted by the entity or that the entity shall submit its own MBE program for the approval of the U. S. Department of Transportation. Projects administered by other public entities under the supervision of the Department will be reviewed for conformance with the appropriate MBE program under a written annual review program to be developed by the MBE Liaison Officer. Resident Engineers will be assigned by the Department on all projects to be administered by entities. These individuals will provide any and all necessary help to entities in drafting and implementing the terms and conditions of programs for using MBE's.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

(K) Procedure by Which the State Will Implement MBE Set-Asides:

It has been determined that State Law does not preclude the use of set-asides. Procedures to implement MBE set-asides shall be established if at any time the Department has reason to believe that it will fail to meet either of its overall annual goals by more than five full percentage points.

### SECTION 8 - SUPPLEMENTAL PROCEDURES:

This program may be supplemented at any time the Department becomes aware of improved procedures that, if adopted, will assist the Department toward meeting the objectives contained in Policy Directive No. 610.

### SECTION 9 - METHOD OF COUNTING MBE PARTICIPATION TOWARD MBE GOALS:

The total dollar value of a contract awarded to a certified MBE shall be counted toward the appropriate contract goal. The total dollar value of a contract award to an MBE owned and controlled by both minority males and non-minority females shall be counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business, but not both. The contractor is at liberty to choose the goal to which the contract value is applied. The portion of the total dollar value of a contract with a joint venture shall be equal to the percentage of the ownership and control of the MBE or female partner in the joint ventures. A prime contractor may count toward contract goals on expenditures to MBE's that perform a commercially useful function in the work of the contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work and carrying out its responsibilities by actually performing, managing, and supervising the work

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

involved. The Division shall evaluate the amount of work subcontracted, industry practice, and other relevant factors. Consistent with normal industry practices an MBE may enter into subcontracts. However, if an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices the MBE shall be presumed not to be performing a commercially useful function. Acting as a broker is not performing a commercially useful function. The MBE may present evidence to rebut this presumption to the Division.

A contractor may count toward its contract goals, expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBE's assume the actual and contractual responsibilities for the provisions of the materials and supplies.

The contractor may count its entire expenditures to an MBE manufacturer, i.e., a supplier that produces goods from raw materials or substantially alters them before resale.

The contractor may count 20% of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

### SECTION 10 - RECORDS AND REPORTS:

The MBE Liaison Officer and Staff will closely monitor the progress of the MBE program. Monthly reports will be prepared summarizing MBE progress. FHWA 1405 reports will continue to be submitted quarterly to FHWA.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### PART 23—PARTICIPATION BY MINORITY BUSINESS ENTERPRISE IN DEPARTMENT OF TRANSPORTATION PROGRAMS

#### Subpart A—General

##### SEC.

- 23.1 Purpose.
- 23.3 Applicability.
- 23.5 Definitions.
- 23.7 Discrimination Prohibited.

#### Subpart B—[Reserved]

#### Subpart C—Department of Transportation Financial Assistance Programs

- 23.41 General.
- 23.43 General Requirements for Recipients.
- 23.45 Required MBE Program Components.
- 23.47 Counting MBE Participation toward Meeting MBE Goals.
- 23.49 Maintenance of Records and Reports.
- 23.51 Certification of the Eligibility of Minority Business Enterprises.
- 23.53 Eligibility Standards.
- 23.55 Appeals of Denials of Certification as an MBE.

#### Subpart D—[Reserved]

#### Subpart E—Compliance and Enforcement

- 23.71 [Reserved]
- 23.73 Complaints.
- 23.75 Compliance Reviews.
- 23.77 [Reserved]
- 23.79 [Reserved]
- 23.81 Conciliation Procedures for Financial Assistance Programs.
- 23.83 Enforcement Proceedings for Financial Assistance Programs.
- 23.85 Emergency Enforcement Procedure.
- 23.87 Willful Provision of Incorrect Information.

#### Schedule A—Information for Determining Minority Business Enterprise Eligibility.

#### Schedule B—Information for Determining Joint Venture Eligibility.

#### Subpart A—General

##### 23.1 Purpose.

(a) The purpose of this part is to carry out the Department of Transportation's policy of supporting the fullest possible participation of firms owned and

controlled by minorities and women. (MBEs) in Department of Transportation programs. This includes assisting MBEs throughout the life of contracts in which they participate.

(b) This part implements in part section 905 of the Railroad Revitalization and Regulatory Reform Act of 1978 (45 U.S.C. 803); section 30 of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1730); section 19 of the Urban Mass Transportation Act of 1964, as amended (Pub. L. 95—599); Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.); and Title 23 of the U.S. Code (relating to highways and highway safety). This regulation supersedes all DOT regulations issued previously under these authorities, insofar as such regulations affect minority business enterprise matters in DOT financial assistance programs.

##### 23.2 Applicability.

This part applies to any DOT program through which funds are made available to members of the public for accomplishing DOT's purposes. Contracts and subcontracts which are to be performed entirely outside the United States, its possessions, Puerto Rico, and the North Mariana Islands, are exempted from this part.

##### 23.5 Definitions.

"Affirmative action" means taking specific steps to eliminate discrimination and its effects to ensure nondiscriminatory results and practices in the future, and to involve minority business enterprises fully in contracts and programs funded by the Department.

"Applicant" means one who submits an application, request, or plan to be approved by a Departmental official or by a primary recipient as a condition to eligibility for DOT financial assistance; and "application" means such an application, request, or plan.

"Compliance" means the condition existing when a recipient or contractor has met and implemented the requirements of this part.

"Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

"Contractor" means one who participates, through a contract of subcontract, in any program covered by this part, and includes lessees.

"Department" or DOT means the Department of Transportation, including its operating elements.

"DOT-assisted contract" means any contract or modification of a contract between a recipient and a contractor which is paid for in whole or in part with DOT

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

financial assistance or any contract or modification of a contract between a recipient and a lessee.

"DOT financial assistance" means financial aid provided by the Department or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

"Departmental element" means the following parts of DOT:

- (a) The Office of the Secretary (OST);
- (b) The Federal Aviation Administration (FAA);
- (c) The United States Coast Guard (USCG);
- (d) The Federal Highway Administration (FHWA);
- (e) The Federal Railroad Administration (FRA);
- (f) The National Highway Traffic Safety Administration (NHTSA);
- (g) The Urban Mass Transportation Administration (UMTA);
- (h) The St. Lawrence Seaway Development Corporation (SLSDC); and
- (i) The Research and Special Programs Administration (RSPA).

"Joint venture" means an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and knowledge.

"Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

- (a) Black (a person having origins in any of the black racial groups of Africa);
- (b) Hispanic (a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race);
- (c) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
- (d) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America.)

(e) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

"Minority business enterprise" or "MBE" means a small

business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purposes of this part, owned and controlled means a business:

- (a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and
- (b) Whose management and daily business operations are controlled by one or more such individuals.

"MBE coordinator" means the official designated by the head of the Department element to have overall responsibility for promotion of minority business enterprise in his/her Departmental element.

"Noncompliance" means the condition existing when a recipient or contractor has failed to implement the requirements of this part.

"Primary recipient" is a recipient who receives DOT financial assistance and passes some or all of this assistance on to another recipient.

"Program" means any undertaking by a recipient to use DOT financial assistance, and includes the entire activity any part of which receives DOT financial assistance.

"Recipient" means any entity, public or private, to whom DOT financial assistance is extended, directly or through another recipient for any program.

"Secretary" means the Secretary of transportation or any person whom he/she has designated to act for him/her.

"Set-aside" means a technique which limits consideration of bids or proposals to those submitted by MBEs.

### 23.7 Discrimination prohibited

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this Program, on the grounds of race, color, national origin, or sex.

### Subpart B—[Reserved]

### Subpart C—Department of Transportation Financial Assistance Programs

#### 23.41 General.

##### (a) *Responsibilities of Applicants and Recipients.*

(1) All applicants and recipients shall follow the requirements of section 23.43.

(2) Applicants and recipients in the following categories who will let DOT-assisted contracts shall implement an MBE program containing the elements set



# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

forth in section 23.45(e)-(i). This program shall be submitted for approval to the DOT element concerned with the application for financial assistance or project approval.

(i) Applicants for funds in excess of \$250,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(ii) Applicants for funds in excess of \$100,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964 as amended;

(iii) Applicants for Section 402 program funds of the National Highway Traffic Safety Administration;

(iv) Applicants for funds in excess of \$250,000 awarded by the Federal Aviation Administration to general aviation airports;

(v) Applicants for funds in excess of \$400,000 awarded by the Federal Aviation Administration to non-hub airports; and

(vi) Applicants for planning funds in excess of \$75,000 awarded by the Federal Aviation Administration.

(vii) Licensees or applicants for a license under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*).

(3) All applicants and recipients in the following categories who will let DOT assisted contracts shall implement an MBE program containing all the elements set forth in section 23.45. The program shall be submitted for approval to the DOT element concerned with the application for assistance or project approval.

(i) Applicants for Federal aid highway program funds;

(ii) Applicants for funds in excess of \$500,000 exclusive of transit vehicle purchases under sections 3, 5, and 17 of the Urban Mass Transportation Act of 1964, as amended, and Federal Aid Urban Systems;

(iii) Applicants for funds in excess of \$200,000 under sections 6 and 8 of the Urban Mass Transportation Act of 1964 as amended;

(iv) Applicants for funds in excess of \$500,000 awarded by the Federal Aviation Administration to large medium and small hub airports; and

(v) Applicants for financial assistance programs, including loan guarantees, by the Federal Railroad Administration and the United States Railway Association.

(b) *Approval Requirement.* Applications and funding agreements are signed and authorizations to proceed are approved only after the applicants MBE program has been approved by the Departmental element. This requirement applies to applications, authorizations to proceed requested by Federal-aid highway program recipients, and requests for draw downs from the U.S. Railway Association submitted 90 days or more following the effective date of this part.

(c) *Effect of agreement.* The MBE program prepared by the applicant and the commitment made by the

applicant to carry out the MBE program is incorporated into and becomes part of this agreement and subsequent financial assistance agreements. The agreement between the Department and the recipient shall contractually bind the recipient to the commitments made in the MBE program, as approved by the Department. Failure to keep these commitments shall be deemed noncompliance with this Part. Once submitted and approved, an MBE program is applicable to all DOT-assisted contracts solicited and let by the applicant after the approval date of the MBE program regardless of the approval date of the grant or project under which the contracts are let.

(d) *Other MBE Programs.* (1) Applicants meeting the criteria set forth in paragraph (a) (2) and (3) of this section who have formulated MBE programs under previous requirements of DOT or other agencies shall revise these programs to conform to the requirements of this part prior to the approval of their next application.

(2) An MBE program approved by one Departmental element is acceptable to all Departmental elements. Applicants having an approved MBE program are not required to resubmit the program or to produce a new program for future applications, as long as all requirements for approval continue to be met and implementation of the program is achieving compliance. The Departmental element reassesses its approval of the MBE program of continuing recipients at least annually.

(e) *Transit Vehicle Manufacturers.* Transit vehicle manufacturers who wish to bid on UMTA-assisted transit vehicle procurement contracts shall have a UMTA-approved MBE program. Each UMTA recipient shall require these manufacturers to certify that they have such a program as a condition for bidding on UMTA-assisted contracts.

(f) *Exemptions.* The head of the Departmental element may, under appropriate circumstances, and with the concurrence of the Secretary, grant deviations or exemptions from this subpart. A request for deviation or exemption from this subpart shall be in writing and shall include a showing as to how the particular situation is exceptional and how the modified program complies substantially with this part. If the applicant asserts that State or local law prohibits it from including a particular provision in its program, the applicant shall provide copies of all legal citations supporting the claim.

### 23.43 General requirements for recipients.

(a) Each recipient shall agree to abide by the statements in paragraphs (a) (1) and (2) of this section. These statements shall be included in the recipient's DOT financial assistance agreement and in all subsequent agreements between the recipient and any subrecipient and in all subsequent DOT-assisted contracts between recipients or subrecipients and any contractor.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

(1) "Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement.

(2) "MBE Obligation. (j) The recipient or its contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts."

(b) Each DOT financial assistance agreement shall include the following: "If as a condition of assistance the recipient has submitted and the Department has approved a minority business enterprise affirmative action program which the recipient agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the recipient of its failure to carry out the approved program the Department shall impose such sanctions as noted in 49 CFR Part 23, Subpart E, which sanctions may include termination of the agreement or other measures that may affect the ability of the recipient to obtain future DOT financial assistance."

(c) The recipient shall advise each subrecipient, contractor, or subcontractor that failure to carry out the requirements set forth in 23.43(a) shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the recipient or such remedy as the recipient deems appropriate.

(d) Recipients shall take action concerning lessees as follows:

(1) Recipients shall not exclude MBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-MBEs for the operation of major transportation-related activities or major activities for the provision of goods and services to the facility or to the public on the facility.

(2) Recipients required to submit affirmative action programs under section 23.41 (a)(2) or (a)(3) that have business opportunities for lessees shall submit to the Department for approval with their programs overall

goals for the participation as lessees of firms owned and controlled by minorities and firms owned and controlled by women. These goals shall be for a specified period of time and shall be based on the factors listed in section 23.45(g)(5)-Recipients shall review these goals at least annually, and whenever the goals expire. The review shall analyze projected versus actual MBE participation during the period covered by the review and any changes in factual circumstances affecting the selection of goals. Following each review, the recipient shall submit new overall goals to the Department for approval. Recipients that fail to meet their goals for MBE lessees shall demonstrate to the Department in writing that they made reasonable efforts to meet the goals.

(3) Except as provided in this section, recipients are not required to include lessees in their affirmative action programs. Lessees themselves are not subject to the requirements of this Part, except for the obligation of section 23.7 to avoid discrimination against MBEs.

### 23.45 Required MBE program components.

(3) A policy statement, expressing a commitment to use MBEs in all aspects of contracting to the maximum extent feasible. (1) The applicant's policymaking body (Board, Council, etc.) shall issue a policy statement signed by the chairperson, which expresses its commitment to the program outlines the various levels of responsibility and states the objectives of the program. The policy statement shall be circulated throughout the applicant's organization and to minority, female, and nonminority community and business organizations.

(b) The designation of liaison officer, as well as such support staff as may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff. (1) The Chief Executive Officer of the recipient shall designate an MBE liaison officer and adequate staff to administer the MBE program. The MBE liaison officer shall report directly to the Chief Executive Officer.

(2) The MBE liaison officer shall be responsible for developing, managing and implementing the MBE program on a day-to-day basis; for carrying out technical assistance activities for MBEs; and for disseminating information on available business opportunities so that MBEs are provided an equitable opportunity to bid on the applicant's contracts.

(c) Procedures to ensure that MBEs have an equitable opportunity to compete for contracts and subcontracts. The recipient shall develop and use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

(1) Arranging solicitations, time for the presentation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation MBEs.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

(2) Providing assistance to MBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

(3) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

(d) *Opportunities for the use of banks owned and controlled by minorities or women.* (1) The recipient shall thoroughly investigate the full extent of services offered by banks owned and controlled by minorities or women in its community and make the greatest feasible use of these banks.

(2) Recipients shall also encourage prime contractors to use the services of banks owned and controlled by minorities or women.

(e) *MBE directory.* (1) The recipient shall have available a directory or source list to facilitate identifying MBEs with capabilities relevant to general contracting requirements and to particular solicitations. The recipient shall make the directory available to bidders and proposers in their efforts to meet the MBE requirements. It shall specify which firms the Department, recipient, or the Small Business Administration has determined to be eligible MBEs in accordance with procedures set forth in this subpart.

(f) *Procedures to ascertain the eligibility of MBEs and joint ventures involving MBEs.* (1) To ensure that its MBE program benefits only firms owned and controlled by minorities or women, the recipient shall certify the eligibility of MBEs and joint ventures involving MBEs that are named by the competitors in accordance with this subpart. Recipients may, at their own discretion, accept certifications made by other DOT recipients.

(2) Recipients shall require their prime contractors to make good faith efforts to replace an MBE subcontractor that is unable to perform successfully with another MBE. The recipient shall approve all substitutions of subcontractors before bid opening and during contract performance, in order to ensure that the substitute firms are eligible MBEs.

(g) *Percentage goals for the dollar value of work to be awarded to MBEs.*

(1) Once the recipient has reviewed proposed contracting to identify those contracting activities which have the greatest potential for MBE participation, the recipient shall set goals that are practical and related to the potential availability of MBEs in desired areas of expertise.

(2) The applicant/recipient shall establish two types of MBE goals:

(i) Overall goals for its entire MBE program, for a specified period of time (e.g. one year), or for a specific project, (e.g. the construction of a facility); and

(ii) Contract goals on each specific prime contract with

subcontracting possibilities, which the bidder or proposer must meet or exceed or demonstrate that it could not meet despite its best efforts.

(3)(i) Recipients shall submit their overall goals and a description of the methodology used in establishing them with their MBE program. When the overall goals expire, new overall goals shall be set and submitted to the Department for approval. Contract goals need not be submitted in the applicant's MBE program, but the program shall contain a description of the methodology to be used in establishing them. Contract goals may require approval by the Department prior to contract solicitation.

(ii) At the time the recipient submits its overall goals to the Department for approval, the recipient shall publish a notice announcing these goals, informing the public that the goals and a description of how they were selected are available for inspection during normal business hours at the principal office of the recipient for 30 days following the date of the notice, and informing the public that the Department and the recipient will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent, and shall be published in general circulation media and available minority-focus media and trade association publications, and shall state that the comments are for informational purposes only.

(4) Recipients shall set separate overall and contract goals for firms owned and controlled by minorities and firms owned and controlled by women.

(5) The applicant shall consider the following factors in setting overall goals:

(i) Overall goals shall be based on projection of the number and types of contracts to be awarded by the applicant and a projection of the number and types of MBEs likely to be available to compete for contracts from the recipient over the period during which the goals will be in effect.

(ii) Overall goals shall also be based on past results of the applicants/ recipient's efforts to contract with MBEs and the reasons for the high or low level of those results.

(6) The applicant/recipient shall review the overall goals at least annually. The review process shall analyze projected versus actual MBE participation during the previous year. The necessary revisions shall be made based on the analysis and submitted to the Department for approval.

(7) Goals shall be set for specific contracts based on the known availability of qualified MBEs.

(8) Recipients and contractors shall at a minimum seek MBEs in the same geographic area in which they seek contractors or subcontractors generally for a given solicitation. If the recipient or contractor cannot meet the goals using MBEs from this geographic area, the recipient or contractor, as part of its efforts to meet the goal, shall expand its search to a reasonable wider

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

geographic area.

(h) *Procedures to require that participating MBEs are identified by name by competitors for contracts.* Recipients shall indicate, in solicitations for DOT-assisted contracts that provide opportunities for MBE participation goals for the use of firms owned and controlled by minorities and firms owned and controlled by women. Solicitations shall require all bidders/proposers to submit a written assurance of meeting the goals in their bids or proposals. Within a reasonable time after the opening of bids and before the award of the contract, the recipient shall require all bidders or proposers wishing to remain in competition for the contract to submit the names of MBE subcontractors, a description of the work each is to perform, and the dollar value of each proposed MBE subcontract. The recipient shall set the time at which bidders and proposers are required to submit this information and inform bidders and proposers of this time in the solicitation. Agreements between a bidder/proposer and an MBE in which the MBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(i) *Selection Criteria To Ensure That Prime Contracts Are Awarded to Competitors That Meet MBE Goals.* (1) If any competitor offering a reasonable price meets the MBE contract goal, the recipient shall presume conclusively that all competitors that failed to meet the goal have failed to exert sufficient reasonable efforts and consequently are ineligible to be awarded the contract.

(2) To implement this presumption, the recipient shall determine whether the competitor offering the lowest price of firms meeting the MBE contract goal has offered a reasonable price for the contract. If the recipient determines that this competitor has offered a reasonable price, the recipient shall award the contract to the firm. If the recipient determines that this competitor's price is not reasonable, it shall consider next the price offered by the competitor with the highest percentage of MBE participation of those firms that failed to meet the goal. If the recipient determines that this price is reasonable, it shall award the contract to this competitor. If the recipient determines that this price is not reasonable, the recipient shall consider the other competitors that failed to meet the goal in order of their percentage of MBE participation until it selects one with a reasonable price. If the recipient determines that no competitor with MBE participation has offered a reasonable price, the recipient may award the contract to any competitor that demonstrates that it has made sufficient reasonable efforts to meet the MBE contract goal.

(3) To decide whether a price offered by a competitor is reasonable, the recipient shall use the same criteria that it would use to determine whether, if the competitor had made the only offer to perform the contract, the recipient would award the contract.

(4) To demonstrate sufficient reasonable efforts to meet the MBE contract goal, a contractor shall document the steps it has taken to obtain MBE participation, including but not limited to the following:

(i) Attendance at a pre-bid meeting, if any, scheduled by the recipient to inform MBEs of subcontracting opportunities under a given solicitation:

(ii) Advertisement in general circulation media, trade association publications, and minority-focus media for at least 20 days before bids or proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.

(iii) Written notification to MBEs that their interest in the contract is solicited;

(iv) Efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the stated goal:

(v) Efforts to negotiate with MBEs for specific subbids including at a minimum:

(A) The names, addresses, and telephone numbers of MBEs that were contacted;

(B) A description of the information provided to MBEs regarding the plans and specifications for portions of the work to be performed; and

(C) A statement of why additional agreements with MBEs, were not reached;

(vi) Concerning each MBE the competitor contacted but rejected as unqualified, the reasons for the competitor's conclusion:

(vii) Effort made to assist the MBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or recipient.

(5) Competitors that fail to meet MBE goals and fail to demonstrate sufficient reasonable efforts shall not be eligible to be awarded the contract.

(6) To ensure that all obligations under contracts awarded to MBEs are met, the recipient shall review the contractor's MBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the recipient any situation in which regularly scheduled progress payments are not made to MBE subcontractors.

(7) The specific solicitation language incorporating the requirements of this subsection shall be included in the MBE program.

(j) *A description of the methods by which the recipient will require subrecipients, contractors, and subcontractors to comply with applicable MBE requirements.* (1) The recipient shall include in its MBE program a description and the specific language of any preconditions to subgrants or contracts pertaining to the use of MBEs, including subcontracting programs, it awards with DOT funds in addition to those required by this section. It shall specify on what size and/or type of contracts and subgrants it includes such preconditions.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

The description shall contain a summary of the ways the recipient provides help to its subrecipients, contractors and subcontractors in drafting and implementing their programs for using MBEs. The description shall also include the means by which the recipient enforces the requirements placed on subrecipients, contractors and subcontractors.

(2) Any MBE subcontracting programs required by the recipient in addition to those required by this section shall be submitted to the recipient by the apparent successful bidder/proposer. The bidders/proposers shall be advised in the solicitation that failure to submit the additional MBE subcontracting program shall make the bidder/proposer ineligible for award.

(k) *Procedures by which the applicant/recipient will implement MBE set-asides.* Where not prohibited by state or local law and determined by the recipient to be necessary to meet MBE goals, procedures to implement MBE set-asides shall be established. MBE set-asides shall be used only in cases where at least three MBEs with capabilities consistent with contract requirements exist so as to permit competition.

### 23.47 Counting MBE participation toward meeting MBE goals.

MBE participation shall be counted toward meeting MBE goals as follows:

(a) Once a firm is determined to be an eligible MBE the total dollar value of the contract awarded to the MBE shall be counted toward the applicable MBE goals.

(b) The total dollar value of a contract to an MBE owned and controlled by both minority males and non-minority females shall be counted toward the goals for minorities and women respectively, in proportion to the percentage of ownership and control of each group in the business. The total dollar value of a contract with an MBE owned and controlled by minority women shall be counted toward either the minority goal or the goal for women, but not to both. The Department may choose the goal to which the contract value is applied.

(c) A contractor may count toward its MBE goals a portion of the total dollar value of a contract with a joint venture eligible under the standards of this subpart equal to the percentage of the ownership and controls of the MBE partner in the joint venture.

(d)(1) A contractor may count toward its MBE goals only expenditures to MBEs that perform a commercially useful function in the work of a contract. An MBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the Department shall evaluate the amount of work

subcontracted, industry practices, and other relevant factors.

(2) Consistent with normal industry practices, an MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the Department.

(e) A contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

(1) The contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(2) The contractor may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

### 23.49 Maintenance of records and reports.

(a) In order to monitor the progress of its MBE program the applicant/recipient shall develop a recordkeeping system which will identify and assess MBE contract awards, prime contractors progress in achieving MBE subcontract goals, and other MBE affirmative action efforts.

(b) Specifically, the applicant/recipient shall maintain records showing:

(1) Procedures which have been adopted to comply with the requirements of this part.

(2) Awards to MBEs. These awards shall be measured against projected MBE awards and/or MBE goals. To assist in this effort, the applicant shall obtain regular reports from prime contractors on their progress in meeting contractual MBE obligations.

(3) Specific efforts to identify and award contracts to MBEs.

(c) Records shall be available upon the request of an authorized officer or employee of the government.

(d)(1) The recipient shall submit reports conforming in frequency and format to existing contract reporting requirements of the applicable Departmental element. Where no such contract reporting requirements exist, MBE reports shall be submitted quarterly.

(2) These reports shall include as a minimum:

(i) The number of contracts awarded to MBEs;

(ii) A description of the general categories of contracts awarded to MBEs;

(iii) The dollar value of contracts awarded to MBEs;

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

(iv) The percentage of the dollar value of all contracts awarded during this period which were awarded to MBEs; and

(v) An indication of whether and the extent of which the percentage met or exceeded the goal specified in the application.

(3) The records and reports required by this section shall provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women. If the records and reports include any 8(a) contractors that are not minorities or women, information concerning these contractors shall also be recorded and reported separately.

### 23.51 Certification of the eligibility of minority business enterprises.

(a) To ensure that this part benefits only MBEs which are owned and controlled in both form and substance by one or more minorities or women, DOT recipients shall use Schedules A and B (reproduced at the end of this Part) to certify firms who wish to participate as MBEs in DOT under this part.

(b) Except as provided in paragraph (c) of this section, each business, including the MBE partner in a joint venture, wishing to participate as a MBE under this part in a DOT-assisted contract shall complete and submit Schedule A. Each entity wishing to participate as a joint venture MBE under this part in DOT assisted contracts shall in addition complete and submit Schedule B. The schedule(s) shall be signed and notarized by the authorized representative of the business entity. A business seeking certification as an MBE shall submit the required schedules with its bid or proposal for transmission to the contracting agency involved.

(c) Under the following circumstances, a business seeking to participate as an MBE under this subpart need not submit schedule A or B:

(1) If a DOT recipient has established a different certification process that DOT has determined to be as or more effective than the process provided for by this section. Where such a process exists, potential MBE contractors shall submit the information required by the recipient's process.

(2) If the potential MBE contractor states in writing that it has submitted the same information to or has been certified by the DOT recipient involved, any DOT element, or another Federal agency that uses essentially the same definition and ownership and control criteria as DOT. The potential MBE contractor shall obtain the information and certification (if any) from the other agency and submit it to the recipient or cause the other agency to submit it. The recipient may rely upon such a certification. Where another agency has collected

information but not made a determination concerning eligibility, the DOT recipient shall make its own determination based on the information it has obtained from the other agency.

(3) If the potential MBE contractor has been determined by the Small Business Administration to be owned and controlled by socially and economically disadvantaged individuals under section 8(a) of the Small Business Act as amended.

### 23.53 Eligibility standards.

(a) The following standards shall be used by recipients in determining whether a firm is owned and controlled by one or more minorities or women is and shall therefore be eligible to be certified as an MBE. Businesses aggrieved by the determination may appeal in accordance with procedures set forth in 23.55.

(1) Bona fide minority group membership shall be established on the basis of the individuals claim that he or she is a member of a minority group and is so regarded by that particular minority community. However, the recipient is not required to accept this claim if it determines the claim to be invalid.

(2) An eligible minority business enterprise under this part shall be an independent business. The ownership and control by minorities or women shall be real, substantial and continuing and shall go beyond *pro forma* ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by a examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE. In determining whether a potential MBE is an independent business. DOT recipients shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority firms vary from industry practice.

(3) The minority or women owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy, and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of the minority or women owners. There shall be no restrictions through, for example, bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent the minority or women owners,

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

without the cooperation or vote of any owner who is not a minority or woman, from making a business decision of the firm.

(4) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered an MBE within the meaning of this part. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business.

(5) All securities which constitute ownership and/or control a corporation for purposes of establishing it as an MBE under this part shall be held directly by minorities or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by minority or women in determining the ownership or control of a corporation.

(6) The contributions of capital or expertise by the minority or women owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged or the mere participation as an employee, rather than as a manager.

(b) In addition to the above standards, DOT recipients shall give special consideration to the following circumstances in determining eligibility under this part.

(1) Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

(2) A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities discussed in this section.

(3) Any relationship between an MBE and a business which is not an MBE which has an interest in the MBE is carefully reviewed to determine if the interest of the non-MBE conflicts with the ownership and control requirements of this section.

(c) A joint venture is eligible under this part if the MBE partner of the joint venture meets the standards for an eligible MBE set forth above and the MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership control, management responsibilities, risks, and profits of the joint venture.

(d) A joint venture is eligible to compete in an MBE set-aside under this part if the MBE partner of the joint venture meets the standards of an eligible MBE set forth above, and the MBE partner's share in the ownership,

control, and management responsibilities, risks, and profits of the joint venture is at least 51 percent and the MBE partner is responsible for a clearly defined portion of the work to be performed.

(e) A business wishing to be certified as an MBE or joint venture MBE by a DOT recipient shall cooperate with the recipient in supplying additional information which may be requested in order to make a determination.

(f) Once certified, an MBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the MBE shall submit a new schedule A.

(g) Except as provided in section 23.55, the denial of a certification by the Department or a recipient shall be final, for that contract and other contracts being let by the recipient at the time of the denial of certification. MBEs and joint ventures denied certification may correct deficiencies in their ownership and control and apply for certification only for future contracts.

(h) Recipients shall safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with Federal, state and local law.

### 23.55 Appeals of denials of certification as an MBE.

(a) *Filing.* Any firm which believes that it has been wrongly denied certification as an MBE or joint venture under sections 23.51 and 23.53 by the Department or a recipient of DOT financial assistance may file an appeal in writing, signed and dated, with the Department. The appeal shall be filed no later than 180 days after the date of denial of certification. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reasons for so doing. Third parties who have reason to believe that another firm has been wrongly denied or granted certification as an MBE or joint venture may advise the Secretary. This information is not considered an appeal pursuant to this section.

(b) *Decision to Investigate.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Status of Certification During the Investigation.* The Secretary may at his/her discretion, deny the MBE or joint venture in question eligibility to participate as an MBE DOT assisted contracts let during the pendency of the investigation, after providing the MBE or joint venture in question an opportunity to show cause by written statement to the Secretary why this should not occur.

(d) *Cooperation in Investigation.* All parties shall cooperate fully with the investigation. Failure or refusal to furnish requested information or other failure to cooperate is a violation of this part.

(e) *Determinations.* The Secretary makes one of the following determinations and informs the MBE or joint

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

venture in writing of the reasons for the determination:

- (1) The MBE or joint venture is certified; or
- (2) The MBE or joint venture is not eligible to be certified and is denied eligibility to participate as an MBE in any direct or DOT assisted contract until a new application for certification is approved by the recipient.

Subpart D—[Reserved]

Subpart E—Compliance and Enforcement

23.71 [Reserved]

23.73 Complaints

(a) *Filing.* Any person who believes himself or herself, another person, or any specific class of individuals to be subjected to a violation of this part may file a complaint in writing, signed and dated, with the Department. The complaint shall be filed no later than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was disclosed. The Secretary may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

(b) *Investigations.* The Secretary ensures that a prompt investigation is made pursuant to prescribed DOT Title VI investigation procedures.

(c) *Cooperation in Investigation.* The respondent to the complaint shall cooperate fully with the investigation. Failure or refusal by the respondent to furnish requested information or other failure to cooperate is a violation of this part.

(d) *Determinations.* Upon completion of the investigation, the Secretary informs the recipient or contractor and complainant of the results of the investigation in writing. If the investigation indicates a failure to comply with this part, the conciliation procedures of 23.81 and, if necessary, the enforcement procedures of 23.83 are followed.

(e) *Intimidation or Retaliation Acts Prohibited.* No recipient, contractor, or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this part, or because he or she made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential at their election during the conduct of any investigation, proceeding, or hearing under this part. But when such confidentiality is likely to hinder the investigation the complainant shall be advised for the purpose of waiving the privilege.

23.75 Compliance reviews of recipients.

(a) *Desk Audit.* All compliance reviews conducted after financial assistance has been approved or contracts have been awarded begin with a desk audit. The desk audit is a review of all material and information concerning the recipient's MBE performance.

(b) *On-Site Review.* An on-site review includes interviews, visits to project or facility sites receiving DOT funds, and inspection of any statistical or documentary materials relevant to the recipient's performance which were not available for review during the desk audit.

(c) *Cooperation.* The recipient shall cooperate fully with these reviews. Failure or refusal to furnish requested information or failure to cooperate is a violation of this part.

(d) *Determination.* As a result of its review of the recipient, the Departmental element civil rights staff makes one of the following determinations:

(1) The recipient is in compliance with its MBE obligations; or

(2) There is reasonable cause to believe that the recipient is not in compliance with its MBE obligations in certain specified respects. Proceedings shall be begun in accordance with 23.81 and, if necessary, 23.83.

23.77 [Reserved]

23.79 [Reserved]

23.81 Conciliation procedures for financial assistance programs.

(a) *Reasonable Cause Notice.* Whenever the responsible office of civil rights makes a determination of reasonable cause to believe that a recipient is in noncompliance, a notice is sent promptly and is written by registered mail, return receipt requested, describing the areas of noncompliance requiring the applicant or recipient to show cause within 30 days why enforcement proceedings or other appropriate action to ensure compliance should not be instituted and offering the recipient an opportunity to conciliate. The responsible office of civil rights shall pursue conciliation efforts for at least 30 days from the date of the reasonable cause notice.

(1) *Successful conciliation.* If a conciliation agreement is signed by the Departmental element's office of civil rights and recipient, it is approved or disapproved by the head of the Departmental element within 20 days of receiving it. If the head of the Departmental element disapproves the agreement, the reasons therefore are stated in writing. The head of the Departmental element may propose amendments to the agreement which are forwarded to the recipient, requesting the recipient's



# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

acceptance or rejection of the amended agreement within 20 days of receipt.

(2) *Unsuccessful conciliation.* If no agreement is signed within 120 days of the notice of reasonable cause enforcement proceedings set forth in 23.83 begin. The head of the responsible office of civil rights, upon a written determination that an additional 30 days are needed to complete conciliation, may extend the conciliation period for 30 days. Subsequent extensions may be made upon such written determinations. The determinations shall include reasons for the extension and shall be provided to the complainant and respondent.

(b) *Effect of conciliation agreement.* If a conciliation agreement is approved, the existence of the determination of noncompliance does not act as a bar to the provision of financial assistance as long as the terms of the agreement are fulfilled. A compliance review is conducted by the Department element within nine months of the approval of an agreement.

### 23.83 Enforcement proceedings for financial assistance programs.

(a) Whenever conciliation efforts pursuant to 23.81 are unsuccessful, enforcement proceedings begin. These proceedings are conducted in accordance with the Department's procedures for enforcing Title VI (49 CFR Part 21).

(b) A finding of noncompliance and the imposition of any sanction pursuant to these proceedings is binding on all other Departmental elements. Sanctions are limited to the recipient with respect to whom the noncompliance finding has been made and to the particular program or activity, or part thereof, in which noncompliance has been found.

### 23.85 Emergency enforcement procedure.

(a) *General.* Whenever the Secretary determines that the conciliation and enforcement proceedings set forth in 23.81 and 23.83 will not result in the timely and adequate enforcement of the provisions of this Part, he/she initiates special enforcement procedures to obtain compliance.

(b) *Emergency Reasonable Cause Notice.* A notice is sent, registered mail return receipt requested, describing the areas of alleged noncompliance, setting forth the reasons why the normal course of conciliation and enforcement pursuant to 23.81 and 23.83 will not result in timely and adequate enforcement, and requiring the recipient to show cause, within a specified period of time, generally not to exceed 15 days, why appropriate action, described in the notice, to ensure compliance should not be taken. The notice states that the recipient must respond in writing or orally on the record before an official appointed by the Secretary or the proposed

action will be taken.

(c) *Decision.* If the Secretary after reviewing the recipient's oral or written response, determines that such action is necessary, he/she orders that all or any part of the contracting activities of the recipient affected by the recipient's alleged noncompliance be halted until the matter is resolved under 23.81 or 23.83. The Secretary's action under this paragraph may not affect any contract already awarded. When the Secretary makes an order under this paragraph, resolution of the matter shall proceed on an expedited basis.

### 23.87 Willful provision of incorrect information.

If at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of the Department. He/she may initiate debarment procedures in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as he/she deems appropriate.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

CONTRACT GOALS FOR  
MINORITY BUSINESS ENTERPRISE  
COLORADO PROJECT NO.

- (a) The Division has determined that two or more MBE firms owned and controlled by minorities can reasonably be expected to compete for \_\_\_\_\_ percent of the work contained in the proposal for this project, and that two or more MBE firms owned and controlled by women can reasonably be expected to compete for \_\_\_\_\_ percent of the work contained in the proposal for this project.
- (b) It is therefore, the goal of the Division that MBE firms owned and controlled by minorities and women will contract for the following percentages of the total dollar amount of this contract:

MBE (Minorities) \_\_\_\_\_ Percent

MBE (Women) \_\_\_\_\_ Percent

- (c) The percentages will be calculated from proposals received for this project according to the following formula:

$$\text{Percentage} = 100 \times \frac{\text{Dollar amount of work to be contracted to MBE's}}{\text{Total dollar amount of the prime contract}}$$

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### BID CONDITIONS MINORITY BUSINESS ENTERPRISE

#### (a) Definitions

For the purpose of this Special Provision, the following terms are defined:

##### 1. Minority

Means a person who is a citizen or lawful permanent resident of the U.S. and who is:

- A. American Indian and Alaskan Native - a person having origins in any of the original peoples of North America;
- B. Asian American - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- C. Hispanic - a person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Carribean Islands, regardless of race;
- D. Black - a person having origins in any of the black racial groups of Africa;
- E. Members of other groups or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act as amended, 15 U.S.C. 637(a).

##### 2. Contract

Means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of this part, a lease is a contract.

##### 3. Minority Business Enterprise (MBE)

Means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. For the purposes of this part, owned and controlled means a business which is at least 51 per centum owned by one or more minorities or women, in the case of a publicly owned business, at least 51 per centum or the stock of which is owned by one or more minorities or women; and whose management and daily business operations are controlled by one or more such individuals.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

### 4. MBE Joint Venture

Means 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. One of the partners in a joint venture must be an approved Minority Business Enterprise as explained in subsection (a) 3 of this Special Provision.

### 5. Reasonably Priced Bid

Means all bids not exceeding the engineer's estimate by more than seven (7) percent. If the low bid exceeds the estimate, then all bids not exceeding the low bid by more than seven (7) percent will be considered to be reasonable prices; subject to appropriate justification of the lowest bidder's total required by Procedural Directives 303.01 and 303.02.

### 6. Contract Goals

Performance Goals: Means MBE goals that the Department feels should appropriately be met by the successful bidder. Contract performance goals will be the percentages to be stated in contract solicitation language and in the Bid Conditions.

Contract Award Goals: Means contract goals upon which decisions to award will be based. Contract award goals will be five (5) full percentage points less than the performance goals. Successful bidders that are awarded a contract based on this goal will be expected to make good faith efforts to provide for additional MBE participation toward meeting the performance goals especially if other unsuccessful bidders assured higher percentages of MBE participation in the contract.

### (b) Determination of Minority Contractors' Eligibility by the Division

1. Any contractor may apply to the Division for status as an MBE. Application shall be made on forms provided by the Division entitled "Minority Contractor Identification Statement" DOH Form No. 892 (Schedule A) or "Information for Determining Joint Venture Eligibility" DOH Form No. 893 (Schedule B). Application need not be made in connection with a particular bid. Only work contracted to MBE prime contractors or subcontracted to firms that have applied for and have been granted status as an MBE by the Division shall be considered toward contract goals as established elsewhere in these Specifications.
2. It shall be the contractor's responsibility to submit his application so that the Division has time to review it. The Division will review applications in a timely manner but is not committed to approve MBE status within any given period of time.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

3. The Division shall prepare, publish or make available from time to time a list of MBE contractors, vendors and suppliers for the purpose of providing a reference source to assist any bidder in meeting the requirement of this bid condition. Bidders may rely upon the most current list as of the time the work is advertised as representing MBE contractors.
4. In meeting the requirements of this bid condition, bidders are in no way limited to the MBE directory referred to in 3 above in seeking out and negotiating with MBE contractors and determining which items of work shall be subcontracted to MBE contractors. Bidders shall exercise their own judgments in selecting any subcontractor to perform any portion of the work.
5. Fully executed DOH Forms No. 892 and 893 shall be submitted to the Division prior to award of contract.

### (c) Bidding Requirements

1. Potential prime contractors shall submit a fully executed DOH Form No. 714 with their proposal and fully executed DOH Form No. 715s no later than five (5) days after the date of bid opening.
2. The award of contract, if awarded, will be made to the lowest responsible bidder that submitted a reasonable price, and will meet or exceed the contract award goals. If a bidder qualifies for award under this criteria and is able to submit fully executed DOH Forms No. 715 for MBE prime contract work and each MBE subcontractor, prior to award, then award will normally be made the day of the bid opening.
3. If none of the responsible bidders that submitted a reasonable price establish an ability to meet or exceed the contract award goals, then the award of contract, if awarded will be made to the bidder that demonstrates sufficient reasonable effort to meet the contract performance goals, submitted a reasonable price and proposes the highest combined MBE participation on DOH Form No. 715. Within five days after the date on which bids were opened, all bidders that submitted reasonable prices shall submit, using DOH Form No. 715, a copy of which is attached, the names of MBE subcontractors to which they intend to subcontract work, a description of the work each is to perform, and the dollar value of each proposed MBE subcontract. The failure to submit completed Form 715 by bidders that have submitted reasonable prices, shall be just cause for the cancellation of the award and forfeiture of the proposal guaranty. Firms bidding as a prime contractor that have been granted MBE status by the Division shall so note on DOH Form No. 715 to be considered eligible for award. In the case of joint ventures, the dollar value of the eligible MBE portion shall be shown on DOH Form No. 715 and determined in accordance with subsection (d) 3 of these bid conditions.

### (d) Counting MBE Participation Toward Goals

1. Once a firm has been granted MBE status by the Division, a percentage of 100% of the total dollar amount of the contract awarded to the MBE shall be counted toward the applicable contract goals.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

2. A percentage of 100% of the total dollar amount of a contract awarded to an MBE owned and controlled by both minority males and non-minority females shall be counted toward the goals for minorities and women, respectively, in proportion to the percentage of ownership and control of each group in the business. A percentage of 100% of the total dollar amount of a contract with an MBE owned and controlled by minority women shall be counted toward either the minority goal or the goal for women, but not to both. The contractor may choose the goal to which the percentage is applied.
3. A contractor may count toward its contract goals the percentage of the total dollar amount of a contract with a joint venture, eligible under the standards of this bid condition, that equals the percentage of the ownership and controls of the MBE partner in the joint venture.
4. A. A contractor may count toward its contract goals only that percentage of expenditures to MBE's that perform a commercially useful function in the work of a contract. An MBE is considered to be performing a commercially useful function by actually performing, managing, and supervising the work involved. To determine whether an MBE is performing a commercially useful function, the Division shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.  
B. Consistent with normal industry practices, an MBE may enter into subcontracts. If an MBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the MBE shall be presumed not to be performing a commercially useful function. The MBE may present evidence to rebut this presumption to the Division.
5. A contractor may count toward its contract goals the percentage of expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBE's assume the actual and contractual responsibility for the provision of the materials and supplies.  
A. The contractor may count the percentage of the entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).  
B. The contractor may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

6. To determine the goals achieved under this contract the total dollars contracted to the MBE's shall be divided by the total awarded contract dollars and multiplied by 100 to determine the percentage of performance. The contractor shall maintain records of payment under this bid condition. Upon completion of the project the contractor shall submit a certificate listing all MBE's that engaged in this contract and report the total dollar amount paid to each.

(f) MBE Subcontractors Failure to Perform Successfully

If the prime contractor finds that an MBE subcontractor is unable to perform successfully, the contractor shall make good faith efforts to replace the MBE subcontractor with another MBE. To demonstrate "Good Faith Effort", a contractor will be expected to:

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

# COLORADO DEPARTMENT OF HIGHWAYS

## MINORITY BUSINESS ENTERPRISE (MBE) PROGRAM

All substitutions of MBE subcontractors will receive prior approval by the Division.

The Division reserves the right to order completion of the work that was subcontracted to an MBE who is unable to perform successfully by any of the following three methods:

- 1) Modify or renegotiate the contract to compensate for reasonable extra costs or time necessary to obtaining an MBE replacement.
- 2) Modify or renegotiate the contract to provide for the completion of the work by the prime contractor.
- 3) Order the work completed by the prime contractor to be reimbursed as provided for in subsection 109.04.

(g) Sanctions

A finding by the Division that the contractor has failed or is failing to make sufficient reasonable efforts to meet contract goals shall be considered sufficient reason for Default and Termination of the contract for this project in accordance with subsection 108.08.



Schedule A—Information for Determining Minority Business Enterprise Eligibility

1. Name of firm \_\_\_\_\_
2. Address of firm \_\_\_\_\_
3. Phone Number of firm \_\_\_\_\_
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) \_\_\_\_\_
5. Nature of firm's business \_\_\_\_\_
6. Years firm has been in business \_\_\_\_\_

7. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

(a) Name	(b) Race	(c) Sex	(d) Years of Ownership	(e) Ownership percent- age	(f) Voting percent- age
-------------	-------------	------------	------------------------------	-------------------------------------	----------------------------------

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

8. Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
  - (1) Financial decisions \_\_\_\_\_
  - (2) Management decisions, such as—
    - a. Estimating \_\_\_\_\_
    - b. Marketing and sales \_\_\_\_\_
    - c. Hiring and firing of management personnel \_\_\_\_\_
    - d. Purchases of major items or supplies \_\_\_\_\_
  - (3) Supervision of field operations \_\_\_\_\_
9. For each of those listed in question 8, provide a *brief* summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.
10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.
11. Identify any owner (see item 7) or management official (see item 8) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

Schedule B—Information for Determining Joint Venture Eligibility

[This form need not be filled in if all joint venture firms are minority owned.]

1. Name of joint venture \_\_\_\_\_
2. Address of joint venture \_\_\_\_\_
3. Phone number of joint venture \_\_\_\_\_
4. Identify the firms which comprise the joint venture. (The MBE partner must complete Schedule A.)  
\_\_\_\_\_  
  - (a) Describe the role of the MBE firm in the joint venture. \_\_\_\_\_  
\_\_\_\_\_
  - (b) Describe very briefly the experience and business qualifications of each non-MBE joint venturer.  
\_\_\_\_\_  
\_\_\_\_\_
5. Nature of the joint venture's business \_\_\_\_\_  
\_\_\_\_\_
6. Provide a copy of the joint venture agreement.
7. What is the claimed percentage of MBE ownership? \_\_\_\_\_
8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 5.)
  - (a) Profit and loss sharing.
  - b. Capital contributions, including equipment.
  - c. Other applicable ownership interests.
9. Control of and participation in this contract. Identify by name, race, sex and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including but not limited to, those with prime responsibility for:
  - (a) Financial decisions \_\_\_\_\_
  - (b) Management decisions, such as
    - (1) Estimating \_\_\_\_\_
    - (2) Marketing and sales \_\_\_\_\_
    - (3) Hiring and firing of management personnel \_\_\_\_\_
    - (4) Purchasing of major items or supplies \_\_\_\_\_  
\_\_\_\_\_
  - (c) Supervision of field operations

Note:

If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

### Minority Business Enterprise Bid Conditions Assurance

(1) Policy

It is the policy of the Department of Transportation that Minority Business Enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement.

(2) MBE Obligation

The recipient or its contractor agrees to ensure that Minority Business Enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that Minority Business Enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT assisted contracts.

(3) Assurance

I, acting in my capacity as officer of the undersigned bidder/bidders (if a joint venture) hereby assures the Department that if awarded this contract I will: (check as appropriate)

- Meet or exceed the contract goals
- Provide for participation within five (5) full percentage points of the combined goals as follows:  
MBE Participation - Minority \_\_\_\_\_ Percent  
MBE Participation - Women \_\_\_\_\_ Percent
- Fail to meet the combined goals by more than five percent, but will demonstrate that sufficient reasonable efforts were made to meet the goals. I will provide for participation as follows:  
MBE Participation - Minority \_\_\_\_\_ Percent  
MBE Participation - Women \_\_\_\_\_ Percent

Sufficient reasonable efforts are understood to be defined as follows:

To demonstrate sufficient reasonable efforts to meet the MBE contract goals, a contractor shall document the steps it has taken to obtain MBE participation, including but not limited to the following:

- i. Attendance at a pre-bid meeting, if any scheduled by the recipient to inform MBE's of subcontracting opportunities under given solicitation;
- ii. Advertisement in general circulation media, trade association publications, and minority-focus media for at least 10 days before bids or proposals are due.
- iii. Written notification to MBE's that their interest in the contract is solicited.
- iv. Efforts made to select portions of the work proposed to be performed by MBE's in order to increase the likelihood of achieving the stated goal;
- v. Efforts to negotiate with MBE's for specific sub-bids including a minimum:
  - a. The names, addresses and telephone numbers of MBE's that were contacted;
  - b. A description of the information provided to MBE's regarding the plans and specifications for portions of the work to be performed; and
  - c. A statement of why additional agreements with MBE's were not reached;
- vi. Concerning each MBE the competitor contacted but rejected as unqualified the reasons for the competitor's conclusion;
- vii. Effort made to assist the MBE's contacted that needed assistance in obtaining bonding or insurance required by the competitor or recipient.

I understand that if I wish to remain in competition for this contract after bids are opened, I will be required to submit a completed DOH Form No. 715 to the Department prior to 4:30 p.m. on the fifth day after the date on which bids are opened.

\_\_\_\_\_  
COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

### Intended MBE Participation

**NOTE:** Submit separate sheets for each proposed MBE and separate packages for MBE's owned and controlled by women and minorities.

I, acting in my capacity as officer of a bidder/bidders (if a joint venture) on this contract request that we be allowed to remain in competition for this contract. I assure that the contract goals as established for this contract will be met within five (5) full percentage points, or that I have attached to this form my documentation establishing that I have demonstrated sufficient reasonable efforts to meet the goals. The following work under this contract will be performed by Minority Business Enterprise.

NAME OF FIRM: \_\_\_\_\_

Is this work to be counted toward the contract goal for women? (    )  
 or minority? (    )

Items of work to be subcontracted	Value of MBE Sub-Contract

Total Dollar Value of this Proposed Subcontract \_\_\_\_\_

Total Dollar Value of Proposed Subcontracts  
 Applicable toward this Goal from Prior Sheets \_\_\_\_\_

Accum. Value of Proposed Subcontracts  
 Applicable to this Goal \_\_\_\_\_

Contract Bid Total \_\_\_\_\_

Accumulative Percent of Contract Bid  
 Total to be Subcontracted to MBE's (Women) \_\_\_\_\_

or  
 MBE's (Minority) \_\_\_\_\_

If an MBE subcontractor is unable to perform successfully for any part of the work as described above, I understand that sufficient reasonable efforts shall be made to subcontract the work to an alternate MBE firm(s), and that the Department may cooperate by modifying or renegotiating the contract to compensate for reasonable extra costs or to allow reasonable additional time for the completion of the contract.

\_\_\_\_\_  
 COMPANY

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

Project No. \_\_\_\_\_

Location \_\_\_\_\_

**Expected MBE Participation**

\* NOTE: Do not include MBE (Minority) and MBE (Women) on the same form. Submit on separate forms for every contract.

Please Check Only One\*:

MBE (Minority)

MBE (Women)

Firm Names: 1. \_\_\_\_\_

4. \_\_\_\_\_

2. \_\_\_\_\_

5. \_\_\_\_\_

3. \_\_\_\_\_

6. \_\_\_\_\_

Items of work for which two or more MBE Firms can reasonably be expected to compete.

ITEM NO.	DESCRIPTION	ESTIMATED VALUE (DOLLARS)	APPLICABLE FIRMS (List by Above No)

Total dollar value of anticipated MBE Work

Estimated Total contract (dollars)

\* Recommended Percentage goal for:

MBE (Minority)  \_\_\_\_\_ %

MBE (Women)  \_\_\_\_\_ %

Prepared by: \_\_\_\_\_

Title: \_\_\_\_\_

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



