

Title VI Assessment & Implementation Plan 2013-2014



I-70 EIS Option A2-LID

Don Hunt, Executive Director
Heidi Humphreys, Division of Administrative Services
Greg Diehl, Civil Rights & Business Resource Center

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CDOT Title VI Assessment and Implementation Plan 2013 - 2014

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Introduction & Statement of Policy

Title VI Assessment and Implementation Plan 2013-2014

Introduction

The Colorado Department of Transportation (CDOT) is responsible for a 9,142 mile highway system, including 3,703 bridges. Each year, this system handles over 26.1 billion vehicle miles of travel. Although the Interstate system accounts for only about 10 percent, or 914 miles of the total mileage on the state system, 40 percent of all travel takes place on our Interstate highways. The highway construction program is managed by CDOT and built by private contractors. This partnership between government (CDOT) and business works well as CDOT improves and expands Colorado's transportation system. The Division of Aeronautics supports aviation interests statewide, including grants to help improve local airports. CDOT's Division of Transit and Rail provides assistance to numerous transit and rail systems in the state. And the Office of Transportation Safety helps local law enforcement agencies with special funds to apprehend drunk drivers, reduce distracted driving and increase use of safety belts.

CDOT is committed to achieving full compliance with Title VI of the 1964 Civil Rights Act and all related non-discrimination laws. Through its policies, assurances and procedures CDOT makes every effort to ensure that no person is excluded from participation in or denied the benefits of any CDOT program or activity on the basis of race, color, national origin, sex, disability or age.

The Colorado Department of Transportation is committed to ensuring that all decisions involving its employees, contractors, and the traveling public are based on individual merit, comport with the most fundamental principles of the equality of opportunity and human dignity and are free from discrimination in all its forms. It is the policy of CDOT not to engage in discrimination or harassment against any person because of race, color, national origin, sex, age, or disability. This policy ensures that no person or group shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity administered by CDOT. See CDOT Policy 604.0, Non Discrimination in Federal Programs Policy, Attachment 12

Inquiries concerning CDOT's policies, compliance with applicable laws, statutes, and regulations, and complaints may be directed to: CDOT, Civil Rights & Business Resource Center, 4201 E. Arkansas Ave., (303) 757-9234. Inquiries about the laws and about compliance may also be directed to the Federal Highway Administration, Colorado Division.

Title VI Assurances

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CDOT's nondiscrimination assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance.

These assurances bind CDOT as well as its contractors, subcontractors, sub-recipients and sub-grantees as well, and CDOT will insert appropriate nondiscrimination clauses in all of its contracts.

CDOT certifies that discrimination based on sex will be proscribed in its assurances. CDOT also agrees to comply with the appropriate federal statutes, regulations, policies and procedures promulgated by the Federal Highway Administration as a condition to receiving federal funds. See Attachment 1, Nondiscrimination Agreement, and Attachment 2, Non-Discrimination Contract Provisions.

NON-DISCRIMINATION ASSURANCE

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

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



CDOT Executive Director

Date June 23, 2011

Legal Authorities

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

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

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

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

Specific Title VI Responsibilities Delegated to CDOT

The Moving Ahead for Progress in the 21st Century Act (“MAP-21”) was enacted in 2012, as Public Law 112-141. MAP-21 authorizes the Federal surface transportation programs for highways, highway safety, freight, and transit. The act is in effect through September 2014, at which time Congress must again reauthorize all such programs through a new transportation authorization bill. Federal law continues to require that the Federal Highway Administration ensures that all state departments of transportation have an approved Title VI nondiscrimination plan and provide annual updates. FHWA also ensures that state DOTs, including CDOT, effectively monitor contractors’ efforts to implement Title VI requirements. The partnership between CDOT and FHWA continues to be an important part of ensuring compliance with the letter and spirit of laws and regulations. CDOT’s Executive Director is fully committed to implementing Title VI requirements.

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Organization & Staffing

- **CDOT Executive Director**
- **Civil Rights & Business Resource Center**
- **Title VI Coordinator**
- **Regional Civil Rights Managers**

Organization & Staffing

Title VI Assessment and Implementation Plan 2013 - 2014

Executive Director

CDOT's Executive Director is ultimately responsible for assuring full compliance with the provisions of Title VI and has directed that non-discrimination is required of all agency employees. Pursuant to 23 CFR 200.9 (b) (1), the Director has established an adequately staffed Civil Rights unit to fulfill Title VI statutory and regulatory requirements. This Civil Rights unit, located at CDOT Headquarters, is known as the Civil Rights & Business Resource Center.

Pursuant to 23 CFR 200.9 the Civil Rights & Business Resource Center has been delegated the responsibility for Title VI actions and its Manager has been designated the CDOT Title VI Coordinator and has access to the Executive Director via the Director of the Division of Administrative Services. The Title VI Coordinator oversees Center staff, including the Title VI Supervisor who prepares implementation plans, conducts annual assessments of pertinent CDOT program areas, makes recommendations to enhance compliance, investigates and resolves Title VI complaints, and prepares all necessary reports.

Civil Rights & Business Resource Center

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

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

The Center does this by providing the following services:

- Training and coaching and business development services for small and disadvantaged highway construction contractors and consultants;
- Training and job placement for entry-level highway construction workers;
- Civil Rights complaint investigation and resolution;
- Facilitating Environmental Justice and Limited English Proficiency requirements in programs and reporting;
- Improving communication links between the Center, the Regions, and CDOT staff;

- Timely completion of DBE certification applications and renewals;
- Implementing updated Title VI plans, monitoring and reporting mechanisms.

The Center is responsible under Title VI to:

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

Title VI Coordinator and Civil Rights Staff

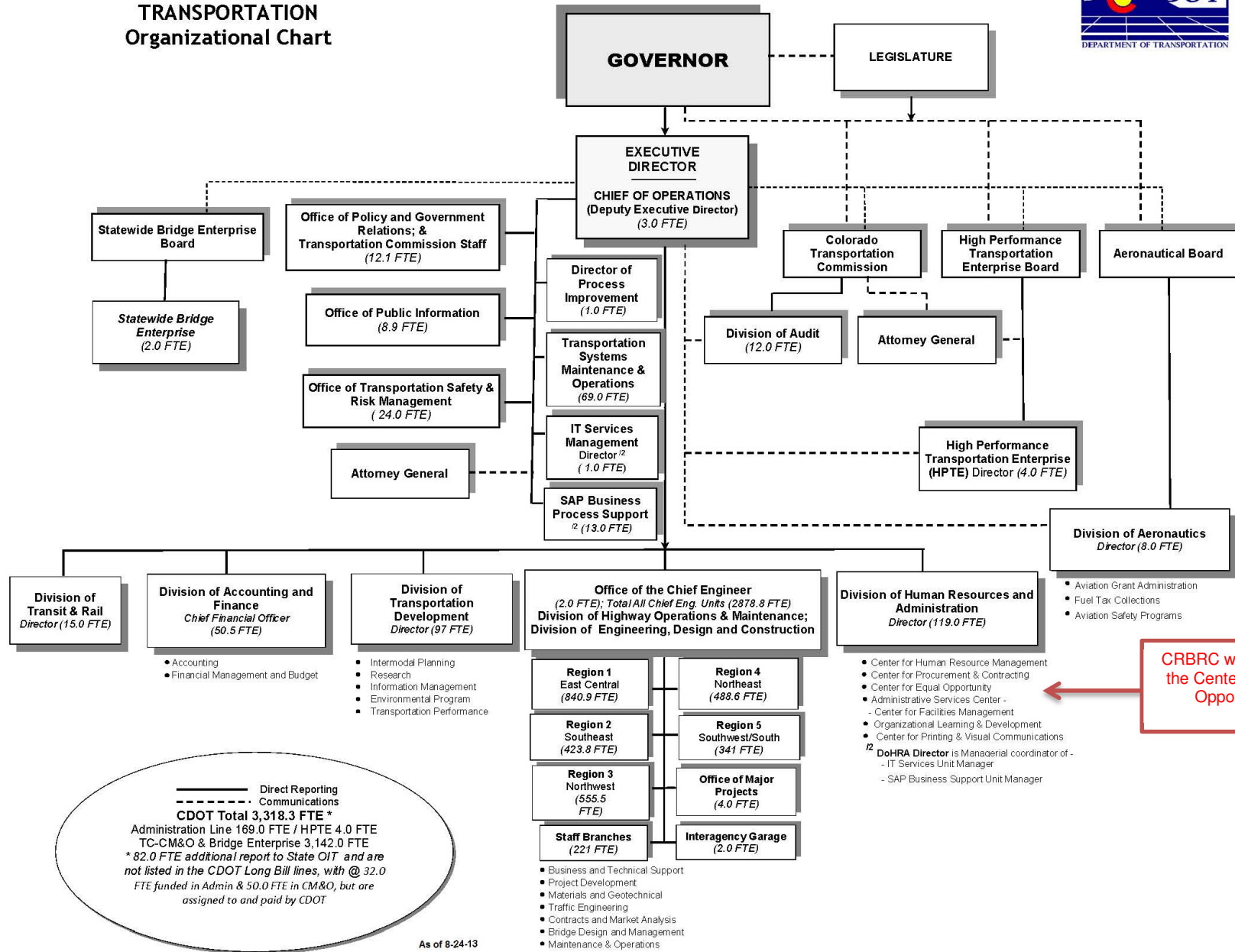
The Title VI Coordinator is charged with the responsibility for implementing and ensuring CDOT's compliance with Title VI responsibilities. Title VI Coordinator has responsibility to:

- Develop procedures for the prompt processing and disposition of complaints;
- Investigating complaints, compiling a complaint log, and reporting to FHWA.
- Developing procedures for the collection and analysis of statistical data.
- Develop a program to conduct Title VI reviews of program areas;
- Conduct review of programs, grant applications and special emphasis areas, sub-recipients and state program directives;
- Monitor Title VI activities and reports to appropriate FHWA Administrators
- Provide training on Title VI to staff, contractors and subrecipients.
- Develop Title VI information for dissemination;
- Review state program directives in coordination with state program officials and, where applicable, include Title VI and related requirements;
- Establish procedures for resolving deficiency status and reducing to writing the remedial action agreed to be necessary.

Regional Civil Rights Managers

CDOT also has Civil Rights Managers in each of its five transportation regions. Regional Civil Rights Managers (RCRMs) are responsible for quality control in Civil Rights programs under their jurisdiction. The RCRMs cooperate with the Headquarters Civil Rights & Business Resource Center to help set project specific DBE and OJT goals, conduct regional contract compliance reviews, ensure regional compliance with Civil Rights laws and regulations, investigate discrimination complaints in the region, and to develop appropriate outreach activities. In addition they assist the Title VI Coordinator and Civil Rights & Business Resource Center staff with region specific Title VI compliance investigations, data collection, reviews of program areas, Title VI training and reports.

COLORADO DEPARTMENT OF TRANSPORTATION Organizational Chart

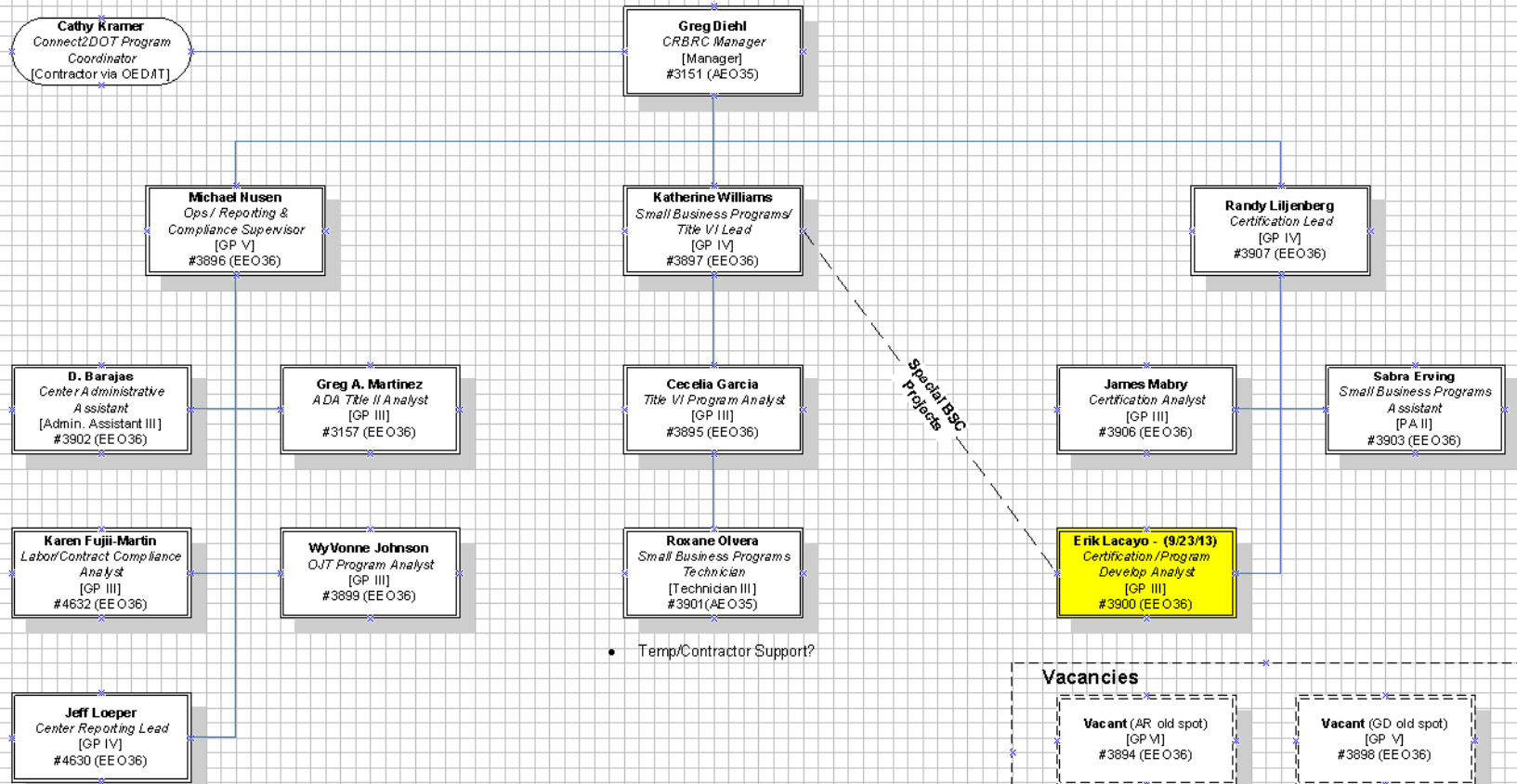


CRBRC was formerly the Center for Equal Opportunity.



Civil Rights & Business Resource Center (CRBRC) – as of 8/19/2013

(14 filled + 2 vacant = 16 total positions)



• Temp/Contractor Support?

Vacancies

Vacant (AR old spot)
[GP VI]
#3894 (EEO36)

Vacant (GD old spot)
[GP VI]
#3898 (EEO36)

NOTE: Transferred #3155 & #3156 to Staff Branches on 8/1/2013

TITLE VI MONITORING, REVIEW RESPONSIBILITIES & PROGRAM AREA PLANS

CDOT's five major program areas are: Planning, Environmental, Right of Way, Construction, Safety and Research. The following program assessments were conducted by the respective program area and submitted to the CRBRC. The CRBRC reviews the practices of each program area to identify areas for improvement. Next year, the CRBRC intend to revamp its review procedures.

Each program area is described below including project results for 2013 and assessment and goals for 2014.

Planning Program

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Program Description

The Statewide Planning and Metropolitan Planning Organization (MPO) and Rural Liaison Sections of the Division of Transportation Development (DTD) Multimodal Planning Branch are responsible for development of long-range statewide and regional transportation plans, which outline a citizen-generated comprehensive multimodal transportation vision for Colorado. The statewide transportation plan sets forth the vision, goals and strategies for transportation statewide, including highway, transit, freight and passenger rail, bicycle and pedestrian, and aviation improvements. DTD is charged with developing a Statewide Transportation Plan that reflects a new direction for Colorado. The Plan will employ user-friendly public involvement techniques, promote data-driven decision making and performance-based planning, include a 10-year needs assessment, incorporate asset management, consider economic development and environmental sustainability, and allow for future performance reporting to ensure sound investment in the transportation system. Through active involvement of the State's Transportation Planning Regions (TPRs), MPOs, and the citizens of Colorado, CDOT looks forward to facing the challenges and opportunities brought about during the development of the statewide transportation plan.

Program Results for 2012 – 2013

The majority of the year was spent developing a comprehensive public involvement program for the development of regional and statewide transportation plans. The key components of the comprehensive public involvement program developed for robust and inclusive public engagement include a SWP website, printed and translated materials, telephone town halls, webinars and public open houses.

SWP Website - The SWP website will serve as the primary public involvement tool for the SWP. MAP-21 federal transportation law encourages the use of the world-wide-web in public involvement in order to better leverage public involvement efforts in the development of Statewide and Regional Transportation Plans. More specifically, 23 CFR 450.210 (vi) states that 'to the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information.' The SWP website is mobile capable allowing for greater access to the site and statewide transportation plan information. Additionally, the SWP website includes a language translation feature for approximately 80 different languages.

Printed Materials - Several downloadable education pieces about the SWP will be developed, posted on the website and be used as a handouts at various public outreach events. These downloadable education pieces would contain, but not limited to the following components: 10-year and 25-year planning horizons, financial scenarios,

priorities and transportation strategies. Additionally, these downloadable educational pieces will be translated into Spanish.

DTD will also utilize targeted bilingual mailings (post cards) that notify the public of the launch of the website and other local TPR meetings in the area.

Telephone Town-Halls - DTD will use telephone town halls as a regional outreach technique that reduces the need for citizens to drive to meetings and allows the dissemination of SWP information to a wide range of stakeholders.

Webinars - For the first time, DTD will utilize webinars as a public involvement tool. Webinars will allow for the combination of voice, video/presentations and audience participation/interaction to occur via a digital medium.

Open Houses - While DTD will continue to employ new digital outreach tools and techniques, more traditional style open houses are still the preferred choice of public outreach by several Colorado stakeholder groups. DTD will host public open houses in several TPRs where participants can fill out comment cards at the meeting and go to the website to gather more specific TPR information.

CDOT staff has finalized the CDOT overarching public involvement guidance document to ensure CDOT has meaningful public involvement for planning and programming processes. The guidance document emphasizes the use of new tools and techniques to broaden outreach to modal groups, the disabled, the elderly and underserved communities.

Included within the public involvement guidance document is a newly developed Tribal Coordination Plan. Working to further solidify the outreach commitment to Tribal Governments, CDOT developed a documented process for consulting with the Tribes on transportation planning and programming.

Statewide Transportation Advisory Committee (STAC) meetings are hosted monthly to provide updates on planning activities including legislative and budget updates and emerging transportation issues. The purpose of the STAC is to advise CDOT and the Transportation Commission on the needs of Colorado's transportation system and review and comment on all regional transportation plans. The STAC is comprised of representatives from both urban and rural areas of Colorado and non-voting representatives from the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe in southwest Colorado. CDOT staff provides STAC members and other interested parties with meeting notifications, as well as meeting minutes and materials via electronic mail (e-mail). Those without e-mail can receive meeting information via fax or mail.

Assessment

The major Title VI challenges faced by the planning process are to ensure effective and comprehensive participation throughout the statewide and regional transportation plan

development process, including participation from low-income, minority and traditionally underserved populations; to seriously consider and analyze all input; to address prospective impacts and benefits; and to document all of the above.

Plan for 2014

DTD will continue to identify specific outreach methods for the upcoming fiscal year and during development of the statewide and regional transportation plans. These methods and activities will work toward improving participation by low-income and minority populations, person with limited English proficiency, and the disabled. Upcoming fiscal year activities include, but are not limited to:

1. DTD will implement the previously identified SWP public involvement program. As previously outlined, the usage of the SWP website, bilingual printed materials, telephone town halls, webinars and open houses will provide a wide range of opportunities for participation and different avenues for participation by diverse populations.
2. DTD will continue to invite a wide range of stakeholders to participate in the planning process. To this end, the development process includes: Spanish translated materials, a website that can be translated into multiple languages, providing all materials in a printed format for those who do not have internet access or a computer, making materials available at local and depository libraries, and considering convenient times and locations for public open houses and other outreach events.
3. The SWP website will serve as the primary public involvement tool for the SWP. MAP-21 federal transportation law encourages the use of the world-wide-web in public involvement in order to better leverage public involvement efforts the development of Statewide and Regional Transportation Plans

DTD Planning Section staff will continue with efforts discussed above in the Program Results section. Many of these efforts continue from year to year and comprise an important component of the overall transportation planning process.

Environmental Program

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Program Description

CDOT proposed projects with a Federal Nexus are required to follow the National Environmental Policy Act (NEPA) of 1969, which requires the evaluation of potential impacts to environmental resources, including social and economic resources of the community. Title VI of the Civil Rights Act of 1964, also requires the evaluation of whether the project has potential to cause disproportionately high and adverse human health or environmental effects on minority and low-income populations. Much of the Title VI work done by CDOT occurs during the project development phase and involves incorporating Environmental Justice standards into the NEPA environmental process. Part of this required process is to conduct effective and meaningful public involvement, which is critical to the overall success of these evaluations. Work is typically completed by a private contractor with direct oversight by the Region environmental staff. The CDOT Division of Transportation Development's Environmental Programs Branch (EPB) supports the Region with technical oversight and assistance.

Program Results for 2012-2013

All CDOT projects included an assessment of the potentially impacted communities and an in-depth analysis of the demographics of the population. If people with limited English proficiency (LEP) occurred within the community, a consultant specializing in communication and cultural awareness was utilized and language translation services were made available at all public outreach meetings. To get the project information out to as many people of the community as possible, postings were made to the internet and flexible meeting times, which accommodated the schedules of the local residents, were used. Meeting locations and all project materials were developed with consideration for the Americans with Disability Act and Title VI requirements. Coupled with the participation of community leaders, these efforts have helped increase the level of community participation for CDOT projects.

Context Sensitive Solutions (CSS) training is incorporated in the Transportation Engineering Training Program (TETP) curricula as well as the Maintenance Academy curricula. CSS trains transportation project managers and staff to practice collaborative, interdisciplinary, holistic development of transportation projects. CSS training focuses on stakeholders involvement and therefore facilitates communication with low income and minority communities that may be affected by CDOT projects.

One example of CDOT's emphasis on Title VI has been its Environmental Justice efforts conducted as a part of the I-70 East Environmental Impact Statement project. Since the

beginning of the project, CDOT has actively engaged and sought input from the low-income and minority communities within the project area. CDOT has employed creative and innovative methods to reach an otherwise underrepresented population. This past year, project team members have been hosting monthly community open houses to maintain open lines of communication. Meaningful involvement of the communities will continue until the study is completed and a decision is finalized. It will also continue on through any future design and construction projects as appropriate.

Assessment

Overall, CDOT has been successful in addressing Title VI needs. Continuation of activities similar to those completed in 2013 will assure continued success. The key challenge for this program is to continue to increase the rate of involvement by low-income and minority populations during environmental studies.

Plan for 2014

1. Environmental staff will continue to engage in activities such as those described in the “Program Results” section above to enhance equal opportunity.
2. Civil Rights & Business Resource Center staff will monitor Environmental Assessment and Environmental Impact Studies to ensure CDOT’s compliance with requirements of Title VI and EO 12898.

Right of Way Program

Title VI Assessment and Implementation Plan 2013 - 2014

CDOT Right of Way Program Description

CDOT's Right of Way Program acquires real property for CDOT's State and federally funded highway projects and provides oversight on behalf of FHWA on local public agency projects affecting a State Highway or Interstate.

The acquisition of real property for CDOT projects requires the talents of several specialty professions within CDOT and external fee consultants:

- Surveyors
- ROW Plan Designers
- Appraisers and Appraisal Reviewers
- Acquisition and Relocation Agents
- Pre-Construction Engineers
- Region Right of Way Program Managers

Each of the five Region Right of Way Managers are responsible for all right of way acquisition and relocation work in their Region, as well as property management in some Regions. The Region Right of Way Managers must coordinate staffing and work assignments with the CDOT Engineering Program to deliver CDOT projects in a timely and on-budget manner. Coordination with the Engineering staff and other specialty programs within CDOT to meet project delivery schedules is demanding, detail-oriented work. The Region Pre-Construction Engineers and Right of Way Managers coordinate staff resources and hire specialty consultants as necessary to procure title work, surveys, final right of way plans. The Region Right of Way Managers then manage the contact with the real property owners, tenants and personal property owners who will have their property rights purchased and be permanently displaced – and all processes that follow through to property acquisition and relocation of owners, tenants and personal property.

CDOT staff and CDOT's appraiser, agent and project management consultants must acquire property interests in a manner that ensures that the property owners are treated fairly and consistently, in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). The Uniform Act applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted programs or projects. CDOT staff and its consultants encourage and expedite acquisition through negotiations with the property owners in an attempt to minimize the need for condemnation and to promote public confidence in the acquisition program. CDOT staff and the right of way consultants strive to ensure that all persons and property displaced as a result of the project are treated fairly consistently

and equitably so that they will not suffer disproportionate injuries as a result of projects designed for the benefit of the public.

Title VI requires fair and equitable treatment of all members of the public who have property acquired or must be relocated during the location of a transportation facility or highway alignment. CDOT Right of Way staff and the right of way consultants accomplish this by complying with the mandates of the Uniform Act, Federal and State laws, and the CDOT ROW Manual.

The CDOT Right of Way (ROW) Program consists of five major functional areas:

1. Survey and ROW Plans:

Title work is performed to determine the ownership of each parcel to be affected by the project. Surveys of the project area include delineation of private properties, which are also included on the Right of Way Plans. Right of Way Plans are prepared at the Region level, and the sent to Headquarters for the Chief Engineer's approval of the Land Acquisition request (per State law). If CDOT acquires a portion of a property, and the remaining portion of the property is of little or no use to the property owner after the acquisition, if CDOT concurs, it has the authority to acquire the entire property and make relocation benefits available, as may be appropriate.

2. Preparation of a Value Finding, Appraisal, Owner's Appraisal and Appraisal Review

After the ROW Plans have been approved and the project has been set up in CDOT's record-keeping system and funded, the Region Right of Way staff notify all of the affected property owners of the intent to acquire some or all of their property interests, an overview of the project and the steps to be taken, including their right to obtain an their own property appraisal for which CDOT will reimburse them. CDOT appraisal staff or their fee appraisers (consultants) personally contact each property owner again to advise them of the project and to invite the property owner to accompany the appraiser on their site visit (necessary to complete the appraisal).

If a property interest to be purchased is estimated at \$25,000 or less, the CDOT Region Right of Way Manager may direct an agent or appraiser to perform a value finding. Appraisals are required for acquisitions that are valued over \$25,000. If a CDOT-employed appraiser is not available to prepare the CDOT appraisal, an appraiser from CDOT's pre-approved list of appraisers must be used. Most of the third party appraisers and review appraisers used by CDOT are small business owners, including numerous minority-owned businesses.

After the appraisal is conducted by CDOT staff or its consulting appraiser, the appraisal report is reviewed by a review appraiser. The majority of appraisal review work is done by CDOT staff, but the work may be contracted out due to staffing shortages and work

load volume. Similar to the requirement for use of a CDOT's-employed appraiser or appraiser from CDOT's pre-approved list, the review appraiser must also be either a CDOT employee or on CDOT's pre-approved list of fee review appraisers.

After the appraisal review is conducted, if the review appraiser recommends an appraisal, the Region's Right of Way Manager may accept the valuation as the Fair Market Value (FMV) of the property. The Region Right of Way Manager may also consult property owner appraisals before writing the FMV. An offer is made to the property owner based on the FMV. The offer letter is the starting point for entering acquisition negotiations with the property owner.

3. Property Interest Acquisition, Displacee Relocation and Business Reestablishment

All affected property owners and tenants are provided notification of the acquiring agency's (CDOT or the LPA) intent to acquire an interest in their property including a written offer letter of just compensation (FMV) specifically describing those property interests to be acquired. Once the Region Right of Way Manager sets the "fair market value" offer amount for the property interest, a CDOT acquisition agent or fee agent (consultant) begins to negotiate with each property owner.

CDOT acquisition and relocation agents (or consultant agent) work with each property owners and tenants who will be displaced on an individual, family or business basis to assist them in locating a new home or business location. The agents also explain the Federal benefits to displacees. The agents coordinate the actual move, and any applicable reimbursable business reestablishment expenses. The Uniform Act provides for numerous benefits to displacees to assist them both financially and with advisory services related to relocating their residence or business operation. The benefits available under the Uniform Act are complex, and are available to both owner occupants and tenants of either residential or business properties. In some situations, only personal property must be moved from the real property and this is also covered under the relocation program.

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

4. Program Management

In addition to the coordination of staff, personnel issues, resources, frequently changing project prioritization and reporting, the Region Right of Way Program Managers and their specialty program supervisors (if they have any) are also charged with responsibility for oversight of local agency projects in their respective regions. Oversight of the local public agency projects is often very time-consuming, as in addition to managing the relationship with the local public agency staff, consultants are also frequently involved. The amount of time CDOT right of way program management staff needs to review work, make corrections and settle disputes depends on the quality of services provided by the local agency consultant or consultant firm. Providing sufficient project oversight and assistance to local public agencies may be more time-consuming and demanding than working on CDOT projects. The reasons for this vary, but most commonly are due to the local public agency staff and consultants' lack of experience and right of specialty skills – and sometimes too, the inability of these parties to recognize that they are not performing work properly.

5. Local Public Agency Oversight

Much of CDOT's right of way work is done by consultants, contracted by the Regions. Most of the larger local public agencies also use right of way consultants to perform right of way functions. CDOT is legally responsible to FHWA for the quality of right of way projects that are part of a project that receives Federal funding in any phase.

Local public agencies choosing to use right of way consultants must select their right of way consultants from CDOT's pre-approved lists of acquisition agents, relocation agents, appraisers and review appraisers. The local agencies usually contract for their right of way consultant services directly. As with CDOT projects, property owners may use, but do not have to use, appraisers from CDOT's list for their owner's appraisal.

Monitoring local public agency right of way work is challenging and some local public agencies are unaware of the policies and procedures that are required to comply with the Uniform Act. They may also rely upon consultants who consider themselves experts, and therefore do not facilitate quality, constructive communication with CDOT. When displacees on local public agency projects file relocation appeals or contact CDOT management or their legislative representatives for assistance, CDOT right of way staff must intervene and remain closely involved in the balance of the project.

Program Results 2012-2013

Since the CDOT ROW Program worked with the CDOT Policy Office to write and work toward the update of the State law concerning business reestablishment reimbursement for small businesses two years ago, many small Colorado businesses have benefitted from the increased reestablishment reimbursement cap. Under the previous Colorado law, CDOT was able to reimburse small businesses for up to \$10,000 of their eligible reestablishment expenses. Now, with the concurrence of the Federal Highway Administration, CDOT can reimburse relocated small businesses for up to \$50,000 of their reestablishment expenses. The new higher reimbursement limit is also applicable to

local public agency projects that have CDOT oversight and use FHWA funding in some aspect of their project.

The CDOT ROW Program is in the process of hiring a minority-owned small business to perform an important, FHWA-mandated quality assurance project on the right of way work done by a consulting firm on a local public agency project. In years past, CDOT ROW also hired minority businesses to perform other personal services projects. One project was to prepare training materials for use with CDOT staff and the local public agency staff who do eminent domain acquisition; appraisal and relocation work with information and training materials concerning the FHWA Every Day Counts right of way initiatives. The second project was to provide a targeted training session on the preparation and use of parcel negotiation logs to CDOT's headquarters and Region acquisition supervisors, staff and program managers.

The Program continues to use the updated and recently translated (to Spanish) acquisition and relocation information booklets, and to employ interpreters as needed for all non-English speaking displacees.

All of the CDOT Regions continue to provide post-acquisition and post-relocation surveys to all displacees to gauge the level of service provided by CDOT staff and consultants for the past year. The surveys are also available in Spanish and all are accompanied by a postage-paid return envelope. The mail-in surveys are mailed directly to the ROW Program staff at Headquarters. The survey return rate has been about 30%, with good to excellent levels of service reported.

In 2010, CDOT began using outside fee review appraisers to do appraisal review. Due to the shortage of CDOT senior appraisers and the need for quick turnaround on projects, a fee review appraiser list was created. The LPAs may contract for fee reviewer services directly. This has worked out very well, and is expected to continue.

In 2011, Region 3 began mentoring an outside licensed appraiser. While this appraiser training and mentoring program is still in its infancy in 2013, it is a start toward the development of a larger appraiser mentoring pilot program to introduce licensed Certified General Appraisers in need of eminent domain experience to CDOT's appraisal work processes. The hope is that as the appraisers gain experience they will become qualified to join CDOT's list of qualified appraisers.

As noted in 2010, CDOT applications for the fee agent (acquisition and relocation) pre-qualified list no longer require sponsorship by a Region ROW Manager. The application and experience requirements are the same, and all ROW Managers are offered the opportunity to review candidate credentials, as fee agents are likely from other states. The program hopes to offer a mentoring program for real estate professionals interested in learning eminent domain acquisition and relocation practices in the coming year.

Quarterly, a few acquisition-relocation staff members from a Region visit their peers in another Region to review randomly selected acquisition and relocation files for adherence to the required process and procedures – and to learn about new and improved procedures

to accomplish the same (required) ends. The results of these systematic reviews are presented at the ROW Managers' meetings as learning and sharing opportunities.

Assessment

While procedures are in place to ensure fair selection of appraisers, review appraisers and agents to be on CDOT's approved right of way consultant lists, there are few minority applicants. Reasons for this disparity may be compared to the percentage of the State's population demographics and the relative obscurity of the right of way specialty professions. Solutions may be explored with the assistance of CDOT's equal opportunity professionals.

Goals for 2013-2014

1. Continue to encourage diversification of appraisers, review appraisers and acquisition-relocation agents; and to begin an agent mentoring pilot program.
2. Civil Rights & Business Resource Center staff will conduct an in-depth review of the relocation and benefits process to assess compliance with Title VI.

Construction Program

Title VI Assessment and Implementation Plan 2013 - 2014

Program Description

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

The Construction Program works to ensure that project plans, bidding and consulting opportunities and work sites are open to all regardless of race, color, or national origin. This is accomplished through contract terms and provisions, project outreach, oversight and enforcement, and supportive services offered to small businesses.

Program Results for 2012-2013

- **DBE Participation on CDOT Contracts:** CDOT has an overall annual goal of 10.25% Disadvantaged Business Enterprise (DBE) participation on all highway contracting opportunities. To date, CDOT has exceeded this goal by obtaining 12.7% participation on construction contracts and 26.48% on consulting contracts.
- **Small Business Program Development:** Since 2010, the Civil Rights and Business Resource Center (CRBRC) small business staff have been focusing on updating both the Disadvantaged Business Enterprise (DBE) program and Emerging Small Business (ESB) program in order to increase opportunities for small and disadvantaged businesses.
 - CDOT piloted new contract provisions to better administer the DBE program on design-build and other innovative projects. Small business participation is a score factor in CDOT's design-build proposals and the regional civil rights offices have continuous oversight in the development of design-build projects.
 - A new standard special provision for construction projects has been developed by the CRBRC in collaboration with many stakeholders including RCROs, federal partners, industry organizations, and internal staff. The new provisions include joint check approval requirements, new termination procedures and monetary reductions for failure to fulfill DBE commitments. Additionally, CDOT recently implemented a new prompt

pay form to ensure that all subcontractors are paid within seven days of the prime's receipt of payment from CDOT.

- CDOT has also continued to improve its Emerging Small Business Program and will be implementing additional changes in late 2013. CDOT currently offers optional financial incentives for small business participation on its large design-build projects.
- **Restricted Projects:** CDOT's small business set-asides are referred to as restricted projects. From 2012-2013, CDOT advertised three restricted projects. Each restricted project was accompanied by outreach to DBEs and other small businesses.
- **Compliance Reviews:** Each of the five regions at CDOT completed three contract compliance reviews annually.
- **Technical Assistance, Supportive Services and Outreach:** CDOT has significantly expanded the Connect2DOT program. This program offers numerous resources to help small and disadvantaged businesses build capacity, increase competitiveness, and perform more effectively on federal-aid projects. Through a partnership with the Colorado Small Business Development Center (SBDC) Network, CDOT has been able to expand support services to DBE's statewide. The following are some highlights from the past year:
 - Implemented program services at ten SBDC locations across the state (Denver Metro, South Denver, Fort Morgan, Greeley, Grand Junction, Montrose, Durango, Alamosa, Pueblo, and Colorado Springs).
 - Installed kiosk workstations throughout the network to provide Internet access in rural areas and one-stop access to CDOT resources, educational tools, online bidding, project plans and documents, a virtual small business network, bid tab analytics, market research, and detailed project opportunity searches.
 - Recruited and trained a team of six CDOT retired engineers to provide one-on-one consulting to small businesses on specialized technical topics through a statewide virtual network. Total of 16 Connect2DOT consultants with one bilingual consultant.
 - Provided one-on-one consulting to more than 75 small businesses to help them get DBE and/or ESB certified, and help them understand CDOT requirements, how to identify and market to primes, estimate accurately, submit competitive bids, secure a place on pursuit teams, complete project documentation, and successfully perform on CDOT and local-agency projects.
 - Launched the connect2dot.org website which provides early-stage and more seasoned DBE firms with information and resources on doing business with CDOT and capitalizing on project opportunities.
 - Developed an online calendar that consolidates training, events, and outreach opportunities offered by various small business support providers, local agency recipients, and industry associations across the state.

- Created program marketing materials in English and Spanish and used targeted print advertising, press releases, signage/banners, promotional items, and email campaigns to promote program services.
- Conducted a direct calling marketing campaign to DBE firms to make them aware of Connect2DOT services and scheduled one-on-one appointments with professional consultants.
- Conducted comprehensive outreach and prime-to-small business networking sessions for four mega federal-aid projects.
- Sponsored several industry and “business-to-government” events and workshops across the state including women’s and veteran’s business conferences, PTAC and SBTRC training, and Chamber/Hispanic Contractors/COMTO/ACEC/AGC member events.

Assessment

CDOT has made strides to ensure opportunity for small and disadvantaged businesses. Continuation of targeted technical assistance and supportive services and project-specific outreach is essential. It is also important that CDOT continues to work with communities of interest, industry leaders and small business to strengthen race neutral measures to increase opportunity.

Plan for 2013-2014

1. CDOT will continue to conduct contract compliance reviews.
2. CDOT will continue to focus on activities to increase the level of DBE participation on large projects, with a special focus on large design-build projects.
3. CDOT will implement changes to the Consultant selection process to assist DBE and ESB firms in securing contracts on CDOT highway design contracts.
4. CDOT will continue to develop the Emerging Small Business Program in order to drive race-neutral DBE participation among smaller DBE firms.
5. CDOT will seek to be more inclusive of rural small businesses by improving online programs and conducting more outreach in rural areas.
6. CDOT will initiate and coordinate a data collection process that will occur at CDOT outreach meetings. Data collection will follow and meet FHWA requirements and will collect reliable information about the impact of FHWA programs (program evaluation) to ensure non-discrimination.

Transportation Safety Programs

Title VI Assessment and Implementation Plan 2013-2014

Program Description

It is the mission of the Office of Transportation Safety (OTS) within the Colorado Department of Transportation (CDOT) to provide programs and projects designed to reduce the number and severity of traffic crashes. In support of this mission, OTS works closely with Colorado communities, law enforcement, and traffic safety experts to design and implement projects to proactively address the state's emerging and persistent traffic safety challenges.

Program Results for FFY13

OTS staff continued outreach efforts to minority populations across the State and proactively solicited proposals from the African American, Latino and Native American communities and coalitions working in traffic safety. Materials and media were produced in English and Spanish to ensure cross-cultural understanding of safety precautions.

Hispanic Outreach

In the past 15 years, the Hispanic population in the United States has increased by dramatic percentages. This rapid growth is tragically reflected in an increasing proportion of deaths and serious injuries within this community resulting from vehicle-related crashes. Greater observance of proper passenger restraint practices could significantly reduce unintentional death and injury within our nation's Hispanic population.

The focus of CDOT's Hispanic Driving Safety Initiative is to address occupant safety issues within the Hispanic community by increasing child restraint and seat belt use. The primary targets of this outreach effort are the Denver, Pueblo and Fort Collins Hispanic communities. The outreach campaign includes educating Hispanic parents, care givers and children through partnerships/collaborations, advertising, public relations, and special events.

In 2012-2013, the following mini-grantees (grants less than \$4,950 that do not require a purchase order) were successful in creating outreach programs that educate members of the Hispanic community of the importance of seat belts and child restraints.

- Clínica Tepeyac
- Commerce City Community Health Services
- Servicios de la Raza

- West Metro Fire Protection District
- Tri County Family Center
- Pagosa Springs Nurturing center
- Aurora Fire Department

Click It or Ticket annual statewide campaign

As part of CDOT's Hispanic outreach campaign for 2013, grantees educated the public about Colorado seat belt laws. Brochures, posters and bill boards featured bilingual Colorado State Trooper Charles Sanchez and included a toll-free phone number where the audience could call to receive additional information about Colorado seat belt laws.

Crossroads Turning Points Inc. 2012-2013

- The goal of this program was to address seat belt usage, and vehicle occupant safety in the Pueblo, San Luis Valley, and Las Animas/ Huerfano counties with a focus on the Hispanic community.
- Crossroads' Turning Points, Inc. and DRIVE SMART Pueblo conducted quarterly meetings, certified and recertified car seat technicians, utilized monthly media ads, held car seat check-up events and weekly fit station appointments in Pueblo, Alamosa, and Trinidad.
- Strategies and initiatives focused on expanded occupant protection, providing educational programs, increasing partnerships, sharing resources, and offering child passenger safety technician training and recertification. Also, increased collaboration with state and local agencies including DRIVE SMART Colorado and Southern Colorado Regional EMS and Trauma Advisory Council (RETAC).
- The results for Fiscal year 2012 demonstrated increased community networking through collaborative programs and events. Five new technicians were certified, Nine technicians were recertified. Of those 14 technicians, 10 were bilingual. The Car Seat Convincer was used at four community events. Weekly fit stations, in five locations, served more than 400 individuals. Sixteen check-up events were held in Pueblo, Alamosa and Huerfano/Las Animas that served more than 500 children for a total of 395 car seats checked and 313 seats replaced or newly installed. More than 50,000 individuals were exposed to monthly posters, banners, pamphlets, flyers, media ads, and radio occupant protection messages.

Native Americans Communities OP Outreach

Ute Mountain Ute Tribe Outreach 2012-2013

The goal of this program is to increase the rate of the usage of seat belts and child safety seats with correct installation within the Tribe. This was done by educating the population on the importance of traffic safety.

Results:

- Twenty-seven occupant protection presentations were offered throughout the community. Baby's Safety Comes First class was established to provide expecting parents assistance in obtaining a car seat prior to the birth of their child. Four classes were offered.
- Two Safety Check Points were held in collaboration with the BIA Law Enforcement with a total of 980 individuals having one-on-one safety information provided to them. Twenty car seats were distributed at these events.
- Monthly Newsletters with safety messages were distributed to 66 departments, Head Start parents, and community members through the Tribal Complex and Indian Health Services Clinic.
- A total of 146 car seats were distributed with education on the correct installation of the seat given through Fitting Stations, 13 check-up events, and two safety check points.
- By observation survey, the number of community members who use proper safety restraints increased from 20-23% this year.

African American Outreach

BurksComm Inc.

The goal of this program is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes by increasing usage of both child and general passenger restraint systems among African American men (ages 18-34) and the African American communities of Colorado.

BurksComm Inc. partnered with Denver Health and Street-Smart, Inc. to launch two new car seat fitting stations in April in northeast Denver health centers that primarily serve low-income African American and Hispanic families. One hundred ninety-eight car seats were replaced at the combined sites in the first six months of operation.

BurksComm Inc. also partnered with the Denver Police Department to conduct the Fourth annual "Safety Sunday" event at Denver's New Hope Baptist Church. Vehicle observations indicated a 13.5% increase in the seat belt use rate among African American male church attendees.

Additional Outreach

Additional outreach programs conducted throughout the year included: Boosters for Big Kids, a pilot program developed to target inner-city second and third grade students and their parents about the need for using car seats; and Sports Outreach, reaching more than 900 football and basketball intramural league players, ages 6-15, and their parents with the occupant safety message.

Gender-Specific Outreach

Cordy and Company

The “No Distracted Driving” 2012-13 campaign took a unique perspective – to focus on female Colorado drivers between the ages of 19 and 54. Focusing on this demographic enabled us to educate, gain information and increase awareness for the purpose of empowering women to make smarter driving choices. This focus was justifiable on the basis of a number of factors that are widely believed to be true about female drivers.

Those factors are:

- Women drivers consistently use hand-held devices more than men.
- Kids in the car are the top distraction for women drivers who are the primary transportation for children.

The key project goals were to:

1. Provide education and outreach to Colorado female drivers between the ages of 19 and 54.
2. Encourage female drivers to act as a source of information and inspiration on the broadest possible scale.

To accomplish these goals, the following project activities were conducted:

1. Created a PowerPoint and made presentations to nine organizations, including civic, faith-based, education, business and resource/support organizations. Also, collected pledges.
2. Placed an article in the Alliance of Business and Professional Women’s newsletter. The information was based on NHTSA’s Distraction.gov materials.
3. Distributed distracted driving materials from CDOT and NHTSA to local organizations.
4. Conducted outreach (including an intercept survey) at the Denver Department of Motor Vehicles office on W. Mississippi.
5. Created a Facebook page dedicated to women and distracted driving. The page was updated frequently to relate current national and local statistics, stories, events and tips to manage driver distraction.

Assessment

While procedures are in place to ensure fair selection of sub-grantees and vendors, OTS' intent is to reach minority communities by contracting within these communities. OTS does not receive as many yearly applications for funds from minority and/or female applicants as would OTS prefer. Reasons for this disparity may be compared to the percentage of the State's population demographics, and solutions may be explored with the assistance of CDOT's equal opportunity professionals.

Plan for 2013-2014

The Office of Transportation Safety (OTS) will continue to establish more targeted outreach to qualified vendors to increase the diversification in the selection of sub-grantees and provide services in the diverse communities of Colorado.

OTS will continue to track data that is relevant to meet FHWA requirements and will collect reliable information about the impact of NHTSA programs to ensure non-discrimination.

Final reports from Grantees with their data results will occur by November 15, 2013 therefore the above data will change by December 1, 2013.

Research Program

Title VI Assessment and Implementation Plan 2013-2014

Program Description

The Applied Research and Innovation Branch is responsible for the development of transportation research program that includes the completion of engineering research related projects as well as other areas such as transit, transportation, environmental, sustainability, and socioeconomic studies and analyses. Majority of the transportation-related research projects are funded with both federal-aid and state monies. The research may be conducted by the Research Branch but is often contracted out to universities and/or consultants that have the capabilities and staff to perform the research. Participation by institutes of Higher Education is obtained through responses to Request for Proposal (RFP).

Program Results for 2013

Proposals were solicited, reviewed and selected without regard to race, color, national origin or sex. Research grants were awarded as follows:

Institution/Organization/Consultant/Contractor & Number of Grants

- | | |
|---|---|
| • University of Colorado, Boulder & Denver | 2 |
| • Colorado State University, Fort Collins | 9 |
| • FHU - Felburg-Holt and Ullevig, Inc. | 2 |
| • Texas Transportation Institute, Texas | 1 |
| • Montana State University, Montana | 1 |
| • Purdue University, Indiana | 1 |
| • Applied Pavement Technology, Inc. | 1 |
| • Vaisala Inc. | 1 |
| • SEH – Short-Elliott-Hendrickson, Inc. | 1 |
| • Cave Hill Corp | 2 |
| • Terralogic, LLC | 1 |
| • Urban Drainage and Flood Control | 1 |
| • JilBehr Engineering Services, Kim Gilbert | 1 |

Assessment

The Applied Research and Innovation Branch seeks to ensure that discrimination is avoided through an RFP or solicitation process that is fair and impartial and not biased toward one particular university or consultant. None of the eight Colorado Hispanic

Serving Institutes of Higher Education are research institutes with the funding and faculty for full scale research projects.

Plan for 2013-2014

1. Notify women and minority-owned research organizations of research grant opportunities.

TITLE VI COMPLIANCE

- **2014 Objectives**
- **Complaint Procedure**

2014 Objectives

During 2013, the Civil Rights and Business Resource Center began to do a comprehensive assessment of its Title VI Program. Working with the regional civil rights staff, during FFY2013, the CRBRC hopes to accomplish the following objectives:

- Update CDOT's nondiscrimination policy directive;
- Evaluate and revise the complaint procedures, develop guidelines for investigations, and update the complaint tracking process;
- Improve the program assessment process to focus on more specific Title VI concerns; and
- Develop a desk audit to determine subrecipient compliance with Title VI and other non-discrimination laws.

CDOT Title VI Complaint Procedure

Colorado Department of Transportation Non-Discrimination Policy states that no person shall, on the ground of race, color, national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Department of Transportation program activity.

The Colorado Department of Transportation has several staff members that are available to assist anyone who believes he/she has been negatively impacted as prohibited by CDOT's Non-Discrimination Policy.

The Civil Rights & Business Resource Center (CRBRC) located at the CDOT Headquarters office is comprised of several staff members specifically trained in the application of Title VI. Staff is available to review any concerns about potential violations of the policy.

CDOT is geographically split into five Regions. Each CDOT Region has a Regional Civil Rights Office (RCRO) comprised of Civil Rights/Contract Compliance Specialists trained in the application of Title VI and experienced with the implementation of CDOT programs. The RCRO may be contacted to review any concerns about potential violations of the policy that may have occurred in their respective Regions.

In order to file a formal Title VI complaint against a recipient of funds from CDOT, the following steps need to be followed:

1. A complainant will contact the CEO or RCRO. If a complaint is received by any other CDOT staff member, that staff member will refer the complaint to the CEO or appropriate Region Civil Rights Office.

2. The Title VI Coordinator or Regional Civil Rights Specialist will conduct an initial determination of the sufficiency of the complaint to be a potential violation of Title VI.
3. If it is determined that the complaint does not meet the basic criteria to be a violation of Title VI, then a determination will be made on whether the issue can be dealt with under other program areas, informally resolved, or administratively closed. That determination will be communicated to the complainant.
4. If it is determined that the complaint meets the basic criteria of a potential violation of Title VI, then an investigation will be conducted by a trained investigator. If the complaint was received by the CEO and arises from a Region location, the CEO staff and Regional Civil Rights Specialist will designate an investigator. The investigation will be completed within 60 days from the date it is determined the complaint is sufficient. A formal notice will be sent to the complainant.
5. The level and method of investigation will be determined on a case by case basis and is at the discretion of the investigator. A final report of findings from the investigation will be prepared by the investigator. A final notice of findings will be sent to the complainant by the investigator. If the investigation is conducted by a Regional Civil Rights Specialist, a copy of the report and final notice of findings will be sent to the CEO. The final notice will include the process for filing an appeal of the decision.
6. A complainant may appeal a decision by submitting a request in writing within 30 days to the CDOT Title VI Coordinator requesting a review by the Director of the Civil Rights & Business Resource Center. The request should include information detailing why the complainant believes the decision was made in error. The Director will review the entire file and make a written determination within 30 days of receipt of the appeal request. The complainant will be given information on how to appeal this decision directly to FHWA in the document.
7. The Civil Rights & Business Resource Center will work with all appropriate individuals and offices to determine outcomes of the complaint.

The following resources are available:

1. HQ Civil Rights & Business Resource Center – 303-757-9303, or 1-800-925-3427
2. Region Civil Rights Offices:

Region 1	303-365-7030
Region 2	719-546-5432
Region 3	970-683-6210
Region 4	970-350-2107
Region 5	970-385-1403

3. Department of Transportation FHWA, Melinda Urban, Office: 720-963-3015

How to File a Complaint

If you believe that you and/or any person(s) under your care have been discriminated against by any organization that receives funds from CDOT for any of its programs, services, facilities or activities, please provide:

1. Your full name, address, and telephone number, and the name of the person who you believe were discriminated against;
2. The name of the organization that you believe has discriminated, its address and telephone number, and any other identifying information;
3. A description of the actions that you believe were discriminatory (dates of actions, names of those who you believe discriminated, and witnesses);
4. Any other information that you believe necessary to support your complaint. Please send copies of relevant documents, and keep originals.

To file With CDOT Headquarters Staff:

Colorado Department of Transportation, Civil Rights & Business Resource Center
Title VI Coordinator, Greg Diehl
4201 East Arkansas Ave.
Denver, CO 80222
303-757-9599

Attachments

- Attachment 1 Non-discrimination Agreement
- Attachment 2 Non-discrimination Contract Provisions
- Attachment 3 Blue Back Contract
- Attachment 4 Required Provisions in Federal Aid Contracts FHWA 1273
- Attachment 5 Required Provisions in Federal Aid Contracts FHWA 1273
- Attachment 6 DBE Definitions and Requirements
- Attachment 7 OJT Special Provisions
- Attachment 8 Summary of Title VI & Exec. Orders
- Attachment 9 Stewardship Agreement
FHWA/CDOT: Civil Rights
- Attachment 10 CDOT Policy 604.0

Attachment 1

NONDISCRIMINATION AGREEMENT

FEDERAL HIGHWAY ADMINISTRATION, COLORADO DIVISION AND COLORADO DEPARTMENT OF TRANSPORTATION

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

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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

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

Attachment 2

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

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

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

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

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

9. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under The Federal-aid Highway Program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under The Federal-aid Highway Program.

10. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.

11. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.

12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

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

Dated _____

(Recipient)

By _____ (Signature of Authorized Official)

Attachment 3

Agency or Department Name: Department of Transportation Department or Agency Number: HAA Contract Routing Number:

CONSTRUCTION PROJECT CONTRACT¹

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

RECITALS

1. Authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for encumbering and subsequent payment of this Contract under Encumbrance Number «**Project_Code**» in Fund Number «**Fund**», Funds Center **R5140-010**, Functional Area «**Function**», GL Account **4231100010**.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to section 24-92-103, CRS, the State issued an Invitation For Bids for a Transportation Construction Project, and the Contractor’s bid was selected in accordance with State law as a result of the advertisement for Colorado Project Number «**PROJECT**», «**Project_Code**».

THE PARTIES THEREFORE AGREE AS FOLLOWS:

Section 1. Scope of Work

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

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

Section 2. Order of Precedence

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

1. The Colorado Special Provisions contained in Section 24 of this Contract
2. Special Provisions for this project
 - a. Project Special Provisions
 - b. Standard Special Provisions
3. The Plans
 - a. Detailed Plans
 - b. Standard PlansCalculated dimensions will govern over scaled dimensions.
4. Supplemental Specifications
5. Standard Specifications for Road and Bridge Construction (“Standard Specifications”)
6. This Contract proper
7. The Contractor’s Proposal, Exhibit A
8. The Contract Exhibits and Attachments in descending order

Section 3. Performance Period

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

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

Section 4. Price – Payment Terms

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

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

Section 5. Payment and Performance Bond

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

Section 6. Legal Authority

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

Section 7. Incorporated Terms and Conditions

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

Section 8. Records

- A. MAINTENANCE. The Contractor (and any subcontractor) shall maintain a complete file of all books, records, accounts, and other written or computerized materials which pertain to the accounting and performance of work, the delivery of services, and the compliance with applicable requirements under this Contract, and shall maintain such records for a period of three (3) years after the date of termination of the Contract, or for such further period as may be necessary to resolve any matters which may be pending.

- B. ACCESS. The Contractor (and any subcontractor) shall permit the State, the FHWA, and their designated representatives, during normal business hours, to access all books, records, accounts, and other relevant material concerning the work performed or services provided under this Contract for the purpose of investigation, audit, and copying to ascertain compliance with, or to detect violation of, any applicable Federal and/or State law or regulation or with the terms of the Contract, or to evaluate performance under the Contract. All records or information obtained in this manner

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

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

Section 9. Remedies, Termination Provisions, Insurance

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

Section 10. Funding

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

Section 11. Representatives and Notice

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

If to the State:	If to the Contractor:
«RE»	«Contractor_Rep»
CDOT Region «REGION»	«Contractor»
3803 N. Main Ave. Suite 200	«Cont_Address»
Durango CO 81301	«Cont_City», «Cont_State»
«Cont_Zip_Code»	
(970) 385-1440	«Cont_Phone»
e-mail: «RE»@dot.state.co.us	e-mail

Section 12. Assignment and Successors

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

Section 13. Changes - Indefinite Quantity Contract - Funding Letter

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

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

Section 14. Contract Modification

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

Section 15. Governmental Immunity

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

Section 16. Severability

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

Section 17. Waiver

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

Section 18. Entire Understanding

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

Section 19. Survival of Certain Contract Terms

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

Section 20. Modification and Amendment

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

Section 21. CDOT Special Provision

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

Section 22. Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §22 applies.

Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Colorado Department of Transportation, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 23. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

SECTION 24 SPECIAL PROVISIONS

SPECIAL PROVISIONS

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

1. **CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
4. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.
5. **COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
6. **CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
7. **BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [*Not Applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [*Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services*] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

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

Revised 1-1-09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

**JOHN W. HICKENLOOPER
GOVERNOR**

«**Contractor**», _____ By _____
Legal Name of Contracting Entity

For The Executive Director
Department of Transportation

Social Security Number or FEIN

Signature of Authorized Officer

LEGAL REVIEW:

**JOHN W. SUTHERS
ATTORNEY GENERAL**

Print Name & Title of Authorized Officer

By: **Contract Waiver #182**

CORPORATIONS:
(A corporate attestation is required.)

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

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

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

**STATE CONTROLLER
DAVID J. McDERMOTT CPA**

By _____

Date _____

Effective Date: April 1, 2004

State of Colorado
Department of Transportation

PERFORMANCE BOND

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

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated _____, 2012, for the construction of a PROJECT described as Colorado Project No. «**PROJECT**», located «**Located**» in «**County**» **County** in the State of Colorado. The work consists of «**Work**»; said work of construction to be done according to the requirements of said contract;

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

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

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

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

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

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

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

Contractor: «**Contractor**»

ATTEST:

SignName: _____
TypeName _____
SuretyCo. _____
Address: _____

Bonding Agent: _____

(Title)

Sign Name: _____
Type Name: _____
Address: _____

Approved by the STATE OF COLORADO, Department of Transportation, This _____ day of _____, A.D. 2012.

By

Chief Engineer, Department of Transportation

State of Colorado
Department of Transportation

PAYMENT BOND

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

The condition of the obligation is that the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, dated _____, 2012, for the construction of a PROJECT described as Colorado State Project No. «**PROJECT**», located «**Located**» in «**County**» **County in the State of Colorado. The work consists of «Work»**; said work of construction to be done according to the requirements of said contract;

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

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

Exhibit C

2 of 2

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

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

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

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

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

Contractor: «**Contractor**»

ATTEST:

SignName: _____
Type Name _____
SuretyCo. _____
Address: _____

Bonding Agent: _____

(Title)

Sign Name: _____
Type Name: _____
Address: _____

Approved by the STATE OF COLORADO, Department of Transportation, This _____ day of _____, A.D. 2012.

By

Chief Engineer, Department of Transportation

Exhibit D

FEDERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit E

Notification of Commitments Within 10% of Original Project Amount

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

Project number: _____

Project code: _____

Contractor: _____

Date: _____

Available Funds

Original contract: \$_____

Planned force account: \$_____

Total \$_____

90% of total \$_____

Commitments

Amount paid to date \$_____

Estimated value of completed work not yet paid \$_____

Total \$_____

Contractor signature _____ Title _____

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

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

(1) This form to be used for the following contracts/situations only (check the appropriate situation):
 ___ indefinite quantity, order more/add more ___ utility/railroad, underestimated total cost
 ___ CDOT construction, sum of CMO's ___ LA construction, underestimated cost
 ___ CDOT construction, underestimated total cost ___ CDOT consultant, underestimated cost

SECTION 1 (Region use)

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

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

FEIN # (6)	Contract routing # (7)	COFRS encumbrance # (indicate PO, SC or PG #) (8)
------------	------------------------	---

Fund (9)	Orgn. (9)	Appro. (9)	Prgm. (9)	Func. (9)	Object/Sub-obj N/P (9)	GBL (9)	Reporting Catg. (9)	Proj/Sub/Phase (9)
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Original contract amount \$ (10)	Has a Budget Request been processed to cover the contract amount increase? ___yes ___no (14)
----------------------------------	--

Previous Funding Letter(s) total \$ (11) <small>(Funding letter #1 thru #__)</small>	Preparer's name (15) PHONE NO:
---	---------------------------------------

This Funding Letter total \$ (12) <small>(#__)</small>	Contract Administrator's/Business Manager's Approval (16) PHONE NO:
---	--

Adjusted contract amount \$ (13)	CDOT Designee Approval (17)
	Local Agency approval (18)

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

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

Exhibit G

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

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

Attachment 4

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

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

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

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

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

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

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

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

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

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

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

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

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

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Attachment 5

December 8, 2005

DISADVANTAGED BUSINESS ENTERPRISE DEFINITIONS AND REQUIREMENTS

NOTICE

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

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

INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:

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

(a) *Definitions and Procedures*

For this project, the following terms are defined:

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

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

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

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

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

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

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

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

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

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

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

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

- A. Seek out and consider UDBEs as potential subcontractors.
 - (1) Contact all UDBEs for each category of work that is being subcontracted.
 - (2) Affirmatively solicit their interest, capability, and price quotations.
 - (3) Provide equal time for all prospective subcontractors to prepare their proposals.
 - (4) Provide at least as much time to UDBEs in assisting them to prepare their bids for subcontract work as to non UDBE subcontractors.
 - (5) Award subcontracts to UDBEs where their quotations are reasonably competitive with other quotations received.

- B. Maintain documentation of UDBEs contacted and their responses.
 - (1) Maintain a list of UDBEs contacted as prospective subcontractors.
 - (2) Maintain thorough documentation of criteria used to select each subcontractor.
 - (3) Where a UDBE expressed an interest in a subcontract and made a quotation, and where the work was not awarded to a UDBE, furnish a detailed letter explaining the reasons.

(b) Certification as a DBE by the Department

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

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

(c) *Bidding Requirements*

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

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

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

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

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

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

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

B. A DBE may enter into subcontracts consistent with normal industry practices. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department.
5. The Contractor may count toward its contract goal the percentage of expenditures for transportation services obtained from UDBE trucking firms, provided the UDBE controls the trucking operations for which it seeks credit. A UDBE trucking firm must have at least one truck and driver of its own, but it can lease trucks owned by others, both DBEs and non-DBEs, including owner-operators. For work done with its own trucks and drivers, and for work done with DBE lessees, the UDBE trucking firm receives credit for all transportation services provided. For work done with non-DBE lessees, the UDBE trucking firm gets credit only for the fees or commissions it receives for arranging the transportation services, because the services themselves are being performed by non-DBEs.
6. The Contractor may count toward its contract goal the percentage of expenditures for materials and supplies obtained from UDBE suppliers (regular dealers) and manufacturers, provided that the UDBEs assume the actual and contractual responsibility for and actually provide the materials and supplies.

A. The Contractor may count 100 percent of its expenditures to a UDBE manufacturer. A DBE manufacturer is a certified firm that operates or maintains a factory or

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

- B. The Contractor may count 60 percent of its expenditures to UDBE suppliers (regular dealers) that are not manufacturers, provided that the DBE supplier performs a commercially useful function in the supply process. A DBE supplier (regular dealer) is a certified firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a supplier (regular dealer) the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A supplier in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or suppliers within the meaning of this section.

- C. The Contractor may count toward its contract goal the following expenditures to UDBE firms that are not manufacturers or suppliers (regular dealers):
 - (1) The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (2) The fees charged for delivery of materials and supplies required to a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a supplier of the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- 7. To determine the goals achieved under this Contract the participation as described in (d) of this special provision shall be divided by the original prime Contract amount and multiplied by 100 to determine the percentage of performance. The Contractor shall maintain records of payment that show amounts paid to all DBEs. Upon completion of the project, the Contractor shall submit a Form 17 listing all DBEs that participated in this Contract, the subcontract tier number of each, and the dollar amount paid to each. This dollar amount shall include payments made by nonDBE subcontractors to DBE subcontractors. The Contractor shall certify the amount paid, which may be audited by the Department. When there is no participation by DBEs, the Contractor shall submit a Form 17 that indicates no participation and gives reasons why there was no participation. CDOT will not count the participation of a DBE subcontractor toward the prime

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

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

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

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

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

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

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

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

(f) Sanctions.

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

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

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

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

Attachments:

- Form 714
- Form 715
- Form 718

ATTACHMENT 6

July 29, 2011

ON THE JOB TRAINING

NOTICE

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

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

INSTRUCTIONS FOR USE ON CDOT CONSTRUCTION PROJECTS:

Use this standard special provision in all Federal-aid projects.

This training special provision is an implementation of 23 U.S.C. 140 (a). The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees.

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

1. The Contractor shall provide on the job training aimed at developing full journey workers in the skilled craft identified in the approved training plan. The Contractor shall provide at a minimum, required training hours listed in the Project Special Provisions for each project.
2. The primary objective of this specification is to train and upgrade women and minority candidates to full journey worker status. The Contractor shall make every reasonable effort to enroll and train minority and women workers. This training commitment shall not be used to discriminate against any applicant for training whether or not the applicant is a woman or minority.

3. The Contractor may employ temporary workers from CDOT supportive services providers to meet OJT requirements. Information pertaining to supportive services providers may be obtained by calling the CDOT OJT Coordinator at the number shown on the link <http://www.coloradodot.info/business/equal-opportunity/training.html>
4. An employee shall not be employed or utilized as a trainee in a skilled craft in which the employee has achieved journey status.
5. The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor and approved by the Department and the Colorado Division of the Federal Highway Administration (FHWA), or the U. S Department of Labor (DOL), Office of Apprenticeship or recognized state apprenticeship agency. To obtain assistance or program approval contact:

CDOT Civil Rights & Business Resource Center
4201 East Arkansas Avenue
Denver, CO 80222
eo@dot.state.co.us
1-800-925-3427

6. The Contractor shall pay the training program wage rates and the correct fringe benefits to each approved trainee employed on the project and enrolled in an approved program. The minimum trainee wage shall be no less than the wage for the Guardrail Laborer classification as indicated in the wage decision for the project.
7. The CDOT Regional Civil Rights Manager must approve all proposed apprentices and trainees for the participation to be counted toward the project goal and reimbursement. Approval must occur before training begins. Approval for the apprentice or trainee to begin work on a CDOT project will be based on:
 - A. Evidence of the registration of the trainee or apprentice into the approved training program.
 - B. The completed Form 838 for each trainee or apprentice as submitted to the Engineer.
8. Before training begins, the Contractor shall provide each trainee with a copy of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, and company policies and complaint procedures.
9. Before training begins, the Contractor shall submit a copy of the approved training program and CDOT Form 1337 to the Engineer. Progress payments may be withheld until this is submitted and approved and may be withheld if the approved program is not followed.
10. On a monthly basis, the Contractor shall provide to the Engineer a completed On the Job Training Progress Report (Form 832) for each approved trainee or apprentice on the project. The Form 832 will be reviewed and approved by the Engineer before reimbursement will be made. The Contractor will be reimbursed for no more than the OJT Force Account budget. At the discretion of the Engineer and if funds are available, the Engineer may increase the force account budget and the number of reimbursable training hours through a Change Order. The request to increase the force account must be approved by the Engineer prior to the training.

11. Upon completion of training, transfer to another project, termination of the trainee or notification of final acceptance of the project, the Contractor shall submit to the Engineer a “final” completed Form 832 for each approved apprentice or trainee.
12. All forms are available from the CDOT Civil Rights & Business Resource Center, through the CDOT Regional Civil Rights Manager, or on CDOT’s website at <http://www.coloradodot.info/business/bidding/Bidding%20Forms/Bid%20Winner%20Forms>
13. Forms 838 and 832 shall be completed in full by the Contractor. Reimbursement for training is based on the number of hours of on the job training documented on the Form 832 and approved by the Engineer. The Contractor shall explain discrepancies between the hours documented on Form 832 and the corresponding certified payrolls.
14. The OJT goal (# of training hours required) for the project will be included in the Project Special Provisions and will be determined by the Regional Civil Rights Manager after considering:
 - A. Availability of minorities, women, and disadvantaged for training;
 - B. The potential for effective training;
 - C. Duration of the Contract;
 - D. Dollar value of the Contract;
 - E. Total normal work force that the average bidder could be expected to use;
 - F. Geographic location;
 - G. Type of work; and
 - H. The need for additional journey workers in the area
 - I. The general guidelines for minimum total training hours are as follows:

Contract dollar value	Minimum total training hours to be provided on the project
Up to 1 million	0
>1 - 2 million	320
>2 - 4 million	640
>4 - 6 million	1280
>6 - 8 million	1600
>8 - 12 million	1920
>12 - 16 million	2240
>16 - 20 million	2560
For each increment of \$5 million, over \$20 million	1280

15. The number of training hours for the trainees to be employed on the project shall be as shown in the Contract. The trainees or apprentices employed under the Contract shall be registered with the Department using Form 838, and must be approved by the Regional Civil Rights Manager before training begins for the participation to be counted toward the OJT project goal. The goal will be met by an approved trainee or apprentice working on that project; or, if a Contractor's apprentice is enrolled in a DOL approved apprenticeship program and registered with CDOT using Form 838 and working for the Contractor on a non-CDOT project. The hours worked on the non-CDOT project may be counted toward the project goal with approved documentation on Form 832. Training hours will be counted toward one project goal.
16. Subcontractor trainees who are enrolled in an approved Program may be used by the Contractor to satisfy the requirements of this specification.
17. The Contractor will be reimbursed \$2.00 per hour worked for each apprentice or trainee working on a CDOT project and whose participation toward the OJT project goal has been approved.
18. The Contractor shall have fulfilled its responsibilities under this specification if the CDOT Regional Civil Rights Manager has determined that it has provided acceptable number of training hours.
19. Failure to provide the required training will result in the following disincentives: A sum representing the number of training hours specified in the Contract, minus the number of training hours worked as certified on Form 832, multiplied by the journey worker hourly wages plus fringe benefits $[(A \text{ hours} - B \text{ hours worked}) \times (C \text{ dollar per hour} + D \text{ fringe benefits})] = \text{Disincentives Assessed}$. Wage rate will be determined by averaging the wages for the crafts listed on Form 1337. The Engineer will provide the Contractor with a written notice at Final Acceptance of the project informing the Contractor of the noncompliance with this specification which will include a calculation of the disincentives to be assessed.

Attachment 7

SUMMARY OF TITLE VI STATUTES and EXECUTIVE ORDERS PROHIBITING DISCRIMINATION

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

for persons with limited English Proficiency and prohibits discrimination on basis of national origin.

Attachment 8

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

TITLE 23--HIGHWAYS

CHAPTER I--FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION

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

Sec. 200.9 State highway agency responsibilities.

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

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

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

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

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

(b) State actions. (1) Establish a civil rights unit and designate
a
coordinator who has a responsible position in the organization and easy
access to the head of the State highway agency. This unit shall contain
a Title VI Equal Employment Opportunity Coordinator or a Title VI

Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Attachment 9

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

Introduction

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

Method of Operation

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

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

The primary Title VI products of CDOT's Civil Rights & Business Resource Center and Regional Civil Rights Offices are:

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

Measures of Equality

Initial measures of quality in the Civil Rights programs include:

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

- Findings from Focus Groups and Customer surveys (Internal & External).

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

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

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

Attachment 10

COLORADO DEPARTMENT OF TRANSPORTATION		POLICY DIRECTIVE Ⓢ PROCEDURAL DIRECTIVE
Subject NON-DISCRIMINATION IN FEDERALLY FUNDED PROGRAMS POLICY		Number 604.0
Supersedes 07/01/04	Effective 03/17/92	Originating Office CIVIL RIGHTS & BUSINESS RESOURCE CENTER

Purpose:

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

Authority:

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

Applicability:

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

Policy:

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

Background:

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color and national origin in federally assisted programs. Parallel statutes likewise forbid sex, age and handicap discrimination by recipients of federal funds. CDOT is a recipient of federal funds and as such it, as well as all of its responsible agents, contractors and consultants, is required to assure such non-discrimination.¹ This prohibition against discrimination applies to all phases, activities and programs of CDOT when any part of CDOT receives federal assistance regardless of whether that particular program or activity is directly federally funded or assisted.² This prohibition against discrimination applies not only to activities and programs provided directly by CDOT through its staff and resources, but also to activities and programs funded totally or in part by CDOT through contracts or other funding relationships or assistance. Due to its broad scope and applicability both civil rights and program personnel are involved in assuring that the proscribed discrimination does not occur.

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

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

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

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

instrumentality of a State or of a local government... any part of which is extended Federal financial assistance.”

³ 23 C.F.R. 200.9 specifies State highway agency responsibilities.

Implementation:

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

Review Date:


This policy will be reviewed in July of 2007.

07/01/04



_____ 07/01/04

Executive Director, CDOT Date



_____ 07/01/04

Secretary, Transportation Commission Date

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