

City and County of Denver
Denver Economic Development & Opportunity
Division of Small Business Opportunity (DSBO)

DSBO Program Requirements Handbook

Applicable to the following DSBO Programs*:

- **Minority and Women-owned Business Enterprise (MWBE)**
 - **Small Business Enterprise (SBE)**
 - **Emerging Business Enterprise (EBE)**

***Current version excludes Disadvantaged Business Enterprise (DBE) and Tenant Finish projects**

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Please refer to the [DSBO website](#) for additional information and all applicable DSBO forms.

Eligibly Requirements for MWBE, SBE and EBE Certifications - see the [DSBO Certification](#) website for additional information. The Certified Small Business Database can be found [here](#).

For general contract compliance inquiries or to confirm the Compliance Project Manager assigned to your contract, please contact:

DSBO@denvergov.org – downtown projects (e.g. DOTI, DPR, GS, etc.)

DSBO@flydenver.com – DEN projects

Introduction

It is the City's intention to create a level playing field on which small and local businesses can compete fairly for city-funded contracts. The purpose of the [Denver Revised Municipal Code](#) ("D.R.M.C." also known as the "DSBO Ordinance") Chapter 28 Article III (Minority and Women-owned Business Enterprise Construction & Associated Professional Services), Article V (Small Business Enterprise Goods and Services), and Article VII (Small Business Enterprise and Emerging Business Enterprise Construction & Associated Professional Services) as well as [DSBO Rules and Regulations](#) is to enable the city, through the departments and agencies of the city, to undertake specific activities to promote equity and maximize opportunities for certified small businesses.

As a condition of City and County of Denver local funding expenditures, DSBO is responsible for administering the City's Minority and Women-Owned Business Enterprise (MWBE) as well as race and gender-neutral Small Business Enterprise (SBE) and Emerging Business Enterprise (EBE) program requirements in accordance with the DSBO Ordinance.

The city, through the DSBO in conjunction with the purchasing division and User Departments/Agencies, is authorized to develop and utilize programs and activities to provide outreach to and to facilitate the participation of all business enterprises in the city's purchasing activities, including, but not limited to, MWBEs, SBEs and EBEs.

The DSBO Program Requirements Handbook (DSBO Handbook) outlines and clarifies requirements and expectations of Bidders/Proposers/Submitters and Contractors/Consultants as presented in the Chapter 28 D.R.M.C. and the associated Rules and Regulations. The signed Signature Statement page of this DSBO Handbook will serve as an exhibit to each executed contract between Contractor/Consultant and the City and County of Denver. The requirements are applicable to both certified and non-certified Prime Contractor/Consultants.

Solicitation/Pre-Award Requirements

A. Certified Small Business Utilization Participation Goals

Through DSBO's authority, opportunities are afforded for certified businesses to perform as primes and/or sub-contractors on city projects. In accordance with the D.R.M.C. and in collaboration with the User Department/Agency, DSBO may assign certified small business participation requirements to construction, reconstruction and remodeling, professional design and construction services as well as goods and services projects. DSBO may also assign goals on individual task orders or work orders issued under an executed contract. For more information, visit the [DSBO Certified Business Utilization website](#).

IMPORTANT: Please refer to the agency solicitation package and/or contract for specific DSBO Program requirements, including certified small business participation goal assigned to the project. Information below outlines the general bid/proposal DSBO requirements.

B. Small Business Utilization Commitment and Responsiveness

Award of projects with certified small business utilization requirements will be determined, in part, on Bidder/Proposer/Submitter's commitment to strengthen the small business community. Said commitment is shown through adherence to and thoughtful completion of the below-listed DSBO requirements, which are **all conditions of responsiveness**. Failure to submit a responsive bid/proposal constitutes cause for rejection thereof.

Bidders/proposers/submitters are urged to carefully review **the solicitation package details and the DSBO forms** before submission to ensure that the forms are accurate, complete, consistent, and executed by the appropriate parties.

On Defined Pool solicitations that do not have an additional small business participation goal(s) responsiveness is conditioned upon bidder/proposer/submitter being certified by the City, by the time of bid/proposal submission, in the NAICS work code(s) that coincide with the scope of work bidder/proposer/submitter will be performing for self-performance credit requirement.

▪ Procurement Type: Hard Bids (IB/IFB/RFB)

The following forms are due at the time of bid opening:

- **Commitment to [MWBE/SBE/EBE] Participation form** – the form must be completed to indicate bidder's commitment towards satisfying the assigned small business program participation requirement with the City and County of Denver certified firms. The committed participation level will be inserted into any resulting contract and the Contractor/Consultant must comply with that committed participation amount during the term of the contract.

In determining whether a bidder's committed level of participation meets the stated small business utilization requirement, DSBO shall base its calculation of applicable dollar amounts and

percentages on the total base bid amount. If a bid contains alternates, participation contained in any alternate will not count towards satisfaction of the requirement at time of bid opening. (**not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).

- **Letter of Intent (LOI)** - The LOI evidences Bidder’s understanding that they will enter into a contractual relationship with the listed certified firm or that Bidder’s subcontractor(s), subconsultant(s), and/or supplier(s) will do so. A separate LOI is required for each certified subcontractor, subconsultant, and/or supplier at all tiers. Additionally, a certified Prime Bidder must submit a LOI for itself for self-performed work. The Prime Bidder must be City and County of Denver certified in the relevant NAICS code(s) by the bid submission deadline for the self-performed work included in the LOI to count towards Bidder’s committed MWBE participation percentage. The collective LOI amounts must be consistent with the total committed certified business participation percent stated on the Commitment to [MWBE/SBE/EBE] Participation form. (**LOI is not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).

***Please refer to “Guide: How To Complete a Letter of Intent” on the [DSBO website](#).**

- **List of Proposed Subcontractors, Subconsultants, and/or Suppliers** - Bidder shall include with their bid a completed DSBO form, entitled “List of Proposed Subcontractors, Subconsultants, and/or Suppliers,” which is a comprehensive list of all (certified and non-certified) with whom Bidder will contract for this project, at all tiers. **Each certified firm’s “contract value” listed on this form must be consistent with the amount listed on that firm’s corresponding LOI.** (** not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).
- **DSBO Program Requirements Handbook (DSBO Handbook) – Signature Statement** - Bidder must submit the completed and signed Signature Statement of the DSBO Program Requirements Handbook with their bid documents to be found responsive. The signed Signature Statement evidences Bidder’s review and agreement to comply with requirements outlined in the DSBO Handbook (** not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).

Please refer to “Counting Certified Small Business Participation” section of the DSBO Handbook for further information regarding regulations on counting certified firm participation.

- **Procurement Type: RFP/Q/O**

The following forms are required at the proposal submission due date:

- **Commitment to [MWBE/SBE/EBE] Participation form** – the form must be completed to indicate proposer’s commitment towards satisfying the assigned small business program participation requirement with the City and County of Denver certified firms. The committed goal participation level will be inserted into any resulting contract and the Contractor/Consultant must comply with that committed goal participation amount during the term of the contract. (** not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).
- **[MWBE/SBE/EBE] Utilization Plan (Utilization Plan) Form** - the Utilization Plan must concisely, comprehensively and meaningfully address ALL three categories outlined in the Utilization Plan form. Leaving a section blank or entering “N/A” may deem the submitter nonresponsive. The Utilization Plan must be submitted at the time of submittal as part of responsiveness requirements. Failure to submit the Utilization Plan may deem submitter nonresponsive. DSBO will approve the Utilization Plan and may require updates to the Utilization Plan after contract execution.
- Exception: if Submitter is submitting documentation of a good faith effort that states that they can only meet 0% of the small business program requirement, they are exempt from this responsiveness requirement and need not submit a completed Utilization Plan form. (** not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).
- **DSBO Program Requirements Handbook (DSBO Handbook) – Signature Statement** - Submitter must submit the completed and signed Signature Statement of the DSBO Program Requirements Handbook with their submittal documents to be found responsive. The signed Signature Statement evidences Submitter’s review and agreement to comply with requirements outlined in the DSBO Handbook. (** not required on Defined Pool solicitations unless an additional certified small business program participation requirement is set by DSBO*).

C. Pre-Award Good Faith Efforts (applicable to all procurement types)

If Bidder/Proposer *cannot meet* the small business participation requirement established by DSBO *or is able to only meet part of the requirement*, they shall furnish to DSBO, with their submittal, a comprehensive statement of their good faith efforts to meet the requirement, along with supporting documentation demonstrative thereof. This means that Bidder/Proposer must show that they took all necessary and reasonable steps to achieve the small business participation requirement which, by their

scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient small business participation, even if they were not fully successful. **Pre-award good faith effort documentation is subject to review and acceptance by DSBO.**

The statement of good faith efforts should address each of the categories outlined in the DSBO [Ordinance](#), and any additional criteria established by Rules and Regulations. As part of their good faith efforts, Submitters are encouraged to solicit the support and assistance of DSBO by contacting the procuring agency's Contract Administrator (CA)/Buyer with specific questions; the CA/Buyer will coordinate with DSBO to reply thereto.

The statement of good faith efforts shall include a specific response and verification with respect to each of the following good faith effort categories, which may be further defined by rule or regulation. A bidder or proposer may include any additional information it believes may be relevant. Failure of a bidder or proposer to show good faith efforts as to any one (1) of the following categories shall render its overall good faith effort showing insufficient and its bid or proposal nonresponsive:

1. The bidder or proposer must solicit through all reasonable and available means the interest of firms holding appropriate City and County of Denver certification in the DSBO-assigned program as well as scopes of work relevant to the project. The bidder or proposer must solicit the interest of such certified firms within enough time, prior to the bid opening or proposal due date, as described in the project-specific procurement documents in the case of a competitive selection process, to allow such certified firms to respond to the solicitation. The bidder or proposer must determine with certainty if the certified firms are interested by demonstrating appropriate steps to follow up initial solicitations.
2. The bidder or proposer must select portions of the work of the contract to be performed by certified firms to increase the likelihood that the project goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate certified firm participation as subcontractors/subconsultants, teaming agreement participants or joint ventures, and for bidder or proposer self-performed work, as suppliers, manufacturers, manufacturer's representatives and brokers, all reasonably consistent with industry practice, even when the bidder or proposer would otherwise prefer to perform these work items with its own forces. The bidder or proposer must identify what portions of the contract will be self-performed and what portions of the contract will be opened to solicitation of bids, proposals and quotes from certified firms. All portions of the contract not self-performed must be solicited for certified firm participation. The ability or desire of a bidder or proposer to perform the work of a contract with its own forces does not relieve the bidder or proposer of the responsibility to meet the project goal or demonstrate good faith efforts to do so.

3. The bidder or proposer, consistent with industry practice, must provide certified firms at a clearly stated location with timely, adequate access to and information about the plans, specifications, and requirements of the contract, including bonding and insurance requirements, if any, to assist them in responding to a solicitation.
4. The bidder or proposer must negotiate in good faith with interested certified firms and provide written documentation of such negotiation with each such certified firms.
5. For each certified firm that contacted the bidder or proposer or that the bidder or proposer contacted or attempted to subcontract, enter into a teaming agreement or joint venture with, consistent with industry practice, the bidder or proposer must supply a statement giving the reasons why the bidder or proposer and the certified firm did not succeed in negotiating a subcontracting/subconsulting, supplier, manufacturer, manufacturer's representative, broker or joint venture agreement, as applicable.
6. The bidder or proposer must provide verification that it rejected each non-utilized certified firm because the certified firm did not submit the lowest bid or it was not qualified. Such verification shall include a verified statement of the amounts of all bids received from potential or utilized subcontractors/subconsultants, suppliers, manufacturers, manufacturer's representatives, brokers or joint ventures on the contract, whether they are certified firms. In making such a determination of not being qualified, the bidder or proposer shall be guided by the definition of qualified, but evidence of lack of qualification must be based on factors other than solely the amount of the certified firm's bid. For each certified firm found not to be qualified by the bidder or proposer, the verification shall include a statement giving the bidder's or proposer's reasons for its conclusion. A bidder's or proposer's industry standing, or group memberships may not be the cause of rejection of a certified firm. A bidder or proposer may not reject a certified firm as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the certified firm capabilities and expertise.
7. If requested by a solicited certified firm, the bidder or proposer must make reasonable efforts to assist interested certified firms in obtaining bonding, lines of credit, alternative payment or performance guarantees, or insurance as required by the city or by the bidder or proposer, provided that the bidder or proposer need not provide financial assistance toward this effort.

8. If requested by a solicited certified firm, the bidder or proposer must make reasonable efforts to assist interested certified firms in obtaining necessary and competitively priced equipment, supplies, materials, or related assistance or services for performance under the contract, provided that the bidder or proposer need not provide financial assistance toward this effort.
9. The bidder or proposer must use the [DSBO Certified Small Business](#) directories to identify, recruit, and place certified firms.

In determining whether a bidder or proposer has satisfied good faith efforts as to a project goal, the success or failure of other bidders or proposers on the contract in meeting such project goal may be considered. Contractors/Consultants are required to make continuous good faith efforts throughout the contract term and document these efforts. Good faith efforts and supporting documents will be reviewed prior to contract closeout.

D. Joint Ventures/Teaming Agreements

If two or more business entities wish to form a joint venture or teaming agreement to bid or propose on a city construction contract, or professional services contract, which proposed joint venture or teaming agreement includes one or more certified firms, then the joint venture or teaming agreement must submit its joint venture or teaming agreement, joint venture affidavit or teaming agreement affidavit, and joint venture eligibility form or teaming agreement eligibility form to DSBO for review by the time stated in the contract bid/proposal project-specific procurement documents for submitting prequalification applications, or if none stated, **ten (10) business days prior to bid opening or proposal due date**. A bid or proposal submitted by a joint venture or teaming agreement that has not timely submitted a satisfactory written joint venture agreement, teaming agreement, joint venture affidavit, teaming agreement affidavit and a joint venture eligibility form or teaming agreement eligibility form as applicable in accordance with the requirements of this section shall be deemed non-responsive and rejected.

*Please note: on Defined Pool procurements, unless specified otherwise in the solicitation documents, Joint Ventures are only permitted between two or more firms that are CCD-certified in the applicable DSBO program assigned to the project (e.g. firms must be CCD SBE certified at the time of submittal.)

DSBO shall review and approve all contractual agreements regarding the terms and provisions of each joint venture or teaming agreement, including:

- a. Whether the joint venture or teaming agreement includes provisions adequately detailing the member's respective scopes and extent of each member's responsibility for performing the work described in the agreement;
- b. Whether the agreement clearly delineates the rights and responsibilities of each member or partner.
- c. Whether the joint venture or teaming agreement includes a certified firm and provisions for the certified firm member to perform a commercially useful function under the contract;
- d. The proportional allocation of profits and losses to each venture or team partner; no certified firm member's or partner's liability should ever exceed said partners percentage of revenue earned while a participant in the joint venture or team;
- e. The method of and responsibility for accounting;
- f. The method by which disputes are resolved;
- g. Whether each member's or partner's share in the capital contribution, control, management responsibilities, risks and profits are equal to its ownership interest in the joint venture or team;
- h. Whether the agreement includes joint management and full integration of work forces by the joint venturers or team members;
- i. That the joint venture or teaming agreement shall continue for, at a minimum, the duration of the project; or
- j. Any additional or further information required by the Director as set forth in the bid documents or otherwise.

The joint venture or team and each member of the joint venture or team shall provide DSBO access to review all records pertaining to joint venture or teaming agreements before and after the award of a contract in order to reasonably assess compliance with the D.R.M.C. and Rules and Regulations. Each member of the joint venture or team must comply with all requests for documentation including but not limited to organization charts, invoices, payment information, business check registers and all other documentation as requested.

If, after the award of a City contract to a joint venture or team, any member of the joint venture or team believes that the terms and conditions of the agreement as approved by DSBO have not been complied with, then such member may seek DSBO's assistance with review and mediation of the issue. The request for review must be made in writing.

If, after the award of a contract, a dispute arises between members of the joint venture regarding performance of work or provision of services or supplies on the eligible project, then such member may seek review and mediation of the issue before DSBO. The request for review must be made in writing.

Within twenty (20) calendar days of receipt of a request for review, if the dispute has not been resolved informally among the parties, DSBO will recommend and schedule an informal meeting among the parties.

DSBO shall have authority to make recommendations in an attempt to resolve the dispute

In the event that DSBO's informal procedures do not resolve the disputes, DSBO shall refer the dispute to a qualified outside mediator, contingent upon the consent of the interested parties, the costs to be borne by the interested parties.

For general questions about JV/Teaming Agreements that do not pertain to open solicitations, please contact DSBO Compliance.

E. Required Subcontract Small Business Program Flow Down Provisions for All Tiers

While no subcontractor will be considered a third-party beneficiary to the executed contract between the City and the Consultant/Contractor, the City considers subconsultants and subcontractors of every tier to be agents of the Consultant/Contractor. Therefore, subconsultants and subcontractors of every tier will be held to all the requirements of the executed contract between the Contractor/Consultant and the City. With that understanding, the Consultant/Contractor is well advised to conform all subcontracts to the requirements of the executed contract and make the executed contract available to all subconsultants and subcontractors.

At the very least, the Consultant/Contractor must include the following provisions in their subcontracts with their certified subcontractors as well as ensure that all tiered subcontractors comply with and insert the provisions of the section into all tiered subcontract agreements/purchase orders inclusive of:

1. Contractor Prompt Payment (if applicable),
2. Counting and Reporting,
3. Termination/Substitution/Reduction Of Scope From Contract,
4. Changes, Amendments, Modifications.

Please refer to the [DSBO Certified Small Business Subcontract Agreement Checklist](#) and the following "Contract Compliance Requirements and Enforcement" section for further information.

F. Additional General Requirements:

- Submitter/Contractor/Consultant shall not restrict any certified firm from providing subconsulting or subcontracting quotations to other Submitters. Any Submitter who does so shall cause their submittal to be rejected.
- Submitter/Contractor/Consultant is strongly encouraged, at minimum, conduct one public information session, as announced in published notices, which all interested

subcontractors/subconsultants and suppliers may attend, at which the Submitter/Contractor/Consultant will present information and answer questions about the work.

- The Contractor/Consultant will provide a Notice of Selection to each certified firm for every subcontract it solicited certified firm participation for, within 30 days of entering into the subcontract, ensuring that unsuccessful certified bidders/proposers are informed of the outcome. This is inclusive of Task Orders and Work Orders.
- The Contractor/Consultant will attend any pre-construction/kick-off meetings scheduled by the User Department and/or DSBO.
- Certified subcontractors/subconsultants/suppliers must have written and executed agreement prior to starting work on any project (e.g. an executed LOI/subcontract/PO).

Contract Compliance Requirements and Enforcement

A. Key Contractor/Consultant Personnel and Responsibilities

***** The information regarding the assigned Contractor/Consultant's DSBO Program Coordinator (Coordinator) shall be provided to DSBO in writing no later than 10 business days post-contract execution. A meeting will be held between DSBO and Contractor's/Consultant's Key Personnel to go over contract compliance requirements prior to any work beginning under the contract.*****

DSBO assigns a Compliance Project Manager (CPM) on each executed contract that has DSBO program requirements. If you do not know the assigned CPM on your contract, please email DSBO@denvergov.org (for downtown projects, excludes DEN) or DSBO@flydenver.com (DEN projects).

DSBO will require that a Contractor/consultant designate a Coordinator(s) as key personnel once awarded the project. The Coordinator(s) should demonstrate experience in meeting DSBO program and reporting requirements as well as managing outreach and development efforts to small and local businesses to improve subconsulting/subcontracting opportunities. The Coordinator shall have management responsibility for implementing, communicating subcontracting, business development and supportive services activity at all tiers. In lower value or shorter duration contracts, a full-time Coordinator may not be necessary; this position may be combined with other project roles, where appropriate.

Key project personnel are required to understand and work with the [Small Business Certification and Contract Management System \(B2G\)](#). Please use the [Small Business Certification and Contract Management System User Guide](#) for further information. If you have trouble accessing B2G, please contact denver@mwdbe.com for technical assistance.

The Coordinator(s) shall be responsible for the following including, but not limited to:

- Day-to-day operational components of the assigned DSBO Program;
- Effectively responding to and reporting to the DSBO on the status of any certified contractor/consultant/supplier; certified subcontractors must be entered in B2G (with accompanying executed Letter of Intent) and approved by DSBO prior to starting any work.
- Interfacing with the DSBO regarding certified firms' issues and obtaining approvals for all certified firm reductions, substitutions or terminations;
- Preparing, completing and submitting all required compliance documentation inclusive of monthly payment reporting in B2G;
- Implementing, managing and reporting on achievement of the DSBO Program Participation Goal Commitment, communicating subcontracting, business development and supportive services activity at all tiers;
- Monitoring lower tier subcontractors/subconsultants and suppliers to ensure that they comply with the DSBO Program requirements and the Utilization Plan submitted by the prime contractor/consultant;
- Ensuring that certified subcontractors/subconsultants/suppliers must have written and executed agreement prior to starting work on any project (e.g. an executed LOI/subcontract/PO).
- Attending required meetings between the Contractor/Consultant, DSBO, and the Project Manager/User Department.
- As requested by DSBO, the Coordinator may be required to perform additional duties, such as submitting a written report detailing the activities and documentation of good faith efforts of the previous month.

B. Reporting, Audits and Review

The Contractor(s)/Consultant(s) are required to report participation in the [Small Business Certification and Contract Management System \(B2G\)](#). B2G is the compliance monitoring system DSBO utilizes to implement payment monitoring requirements. Prime Contractor(s)/Consultant(s) are required to report all payments made to and received by all subcontractors each month. This monthly requirement is known as an "audit" in B2G and will be referred to as such within the system and in any future communication received regarding such. Prime contractor/consultant must inform subcontractors at all tiers of their responsibility to respond to audits. If certified subcontractors fail to confirm payments through the audits, participation for those payments will not count towards meeting the small business goal commitment

and may result in noncompliance action. (Prime contractor/consultant may provide proof of payment if their subcontractor/subconsultant/supplier fail to confirm payment in B2G.)

If requested by DSBO, DSBO shall have prompt, full and complete access to all Contractor/Consultant and certified firm(s) personnel, books, records bid packages, subcontract documents required to monitor and assure performance of the contractor/consultant and the contractor's/consultant's adherence the DSBO Program.

All contractor/consultant(s) that perform under this contract are required to retain all records of participation on this project for seven (7) years from the completion of the project. This requirement flows down to all lower tier contractor/consultant(s) and must be within their subcontract agreements.

Per the [DSBO Ordinance](#) (D.R.M.C), any business enterprise affected by the operation of DSBO program requirements shall have the burden of proving its compliance with the requirements and obligations under the D.R.M.C. The DSBO is empowered to receive and investigate complaints and allegations by certified firms, third parties or city personnel, or to initiate its own investigations regarding compliance with the requirements and obligations of the D.R.M.C. If the DSBO determines in its sole discretion that an investigation is warranted, upon written notice of such investigation the affected party shall be obligated to cooperate fully with the investigation and shall have a continuing burden of providing complete, truthful information to the DSBO and of otherwise proving compliance with the requirements and obligations with the DSBO Ordinance.

C. Counting Certified Small Business Participation

The DSBO Program participation goal applies to the total value of all work performed under the contract which includes the value of all change orders, amendments and modifications (excluding force accounts when applicable). Any partial waiver determination will be made at or near the conclusion of the contract when the totality of the circumstances can be taken into consideration and the Contractor's/Consultant's good faith efforts can be objectively evaluated. To count MWBE/SBE/EBE participation toward the goal established for this contract, the proposed MWBE/SBE/EBE(s) must be certified as a MWBE/SBE/EBE(s) with the City and County of Denver under the appropriate NAICS code(s) that coincides with the scope of work(s) that they will execute on the project/contract. Additionally, the MWBE/SBE/EBE firm must be certified as an MWBE/SBE/EBE and perform a "commercially useful function." City and County of Denver certification does not, however, constitute a representation or warranty by CCD as to the qualification of any listed firm.

CCD will require the total certified small business participation goal commitment to be achieved in accordance with the following:

1. MWBE/SBE/EBE bidders/proposers can count themselves as self-performing toward meeting the MWBE/SBE/EBE participation goal, but only for the scope of work that they are certified in as

an MWBE/SBE/EBE and at a percentage level they will be actually performing themselves with their own forces. The self-performing bidder/proposer must hold the relevant CCD certification by the time of bid/proposal deadline.

2. Work actually performed by MWBE/SBE/EBE is deemed to include the cost of materials and supplies purchased and equipment leased by the MWBE/SBE/EBE from non-MWBE/SBE/EBE sources. Work subcontracted can only count if the subcontractor/subconsultant is another MWBE/SBE/EBE;
3. The entire fee or commission charged by an MWBE/SBE/EBE, if reasonable and not excessive, will be counted;
4. Each MWBE/SBE/EBE must perform a "commercially useful function" to be counted toward the goal and at least 30% of the work must be performed by a MWBE/SBE/EBE of the total cost of its contract for the MWBE/SBE/EBE to be presumed to be performing a "commercially useful function";
5. Count expenditures with MWBE/SBE/EBEs for materials and supplies towards MWBE/SBE/EBE participation goal/goal commitment as provided in the following:
 - a. If the materials or supplies are obtained from a MWBE/SBE/EBE manufacturer, count one hundred (100) percent of the cost of the materials or supplies toward MWBE/SBE/EBE participation goal/goal commitment.
 - b. If the materials or supplies are purchased from a MWBE/SBE/EBE regular dealer, count sixty (60) percent of the cost of the materials or supplies toward MWBE/SBE/EBE participation goal/goal commitment. For purpose of this section, a regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. Manufactures, representatives, and packagers shall be counted in the same manner as brokers; and
 - c. In utilizing the MWBE/SBE/EBE participation of a Broker, only the bona fide fees and commissions earned by them for their performance of a commercially useful function will count toward meeting the project goals. The Bidder/Proposer/Contractor/Consultant must separate the bona fide brokerage fees and/or commissions from the actual cost of the supplies or materials provided to determine the actual dollar amount of participation that can be counted towards meeting the goal.

DSBO will count toward Contractor/Consultant MWBE/SBE/EBE participation goal/goal commitment a portion of the total dollar value of a contract with a joint venture equal to the distinct, clearly defined portion of the work of the contract that the MWBE/SBE/EBE performs with its own forces toward the MWBE/SBE/EBE participation goal/goal commitment and such services/supplies/NAICS codes are approved for MWBE/SBE/EBE participation credit. The joint venture agreement MUST specify the

services, dollar value, reporting structure and details of the MWBE/SBE/EBEs performance requirements associated with the percentage of the joint venture ownership.

Defined Pool: on defined pool solicitations, the Contractor/Consultant must maintain a minimum of 30% self-performance requirement. During performance, accounting of participation will be maintained for all purchase orders, tasks orders and work orders which will be collectively applied to the contract's overall self-performance attainment.

If the certified prime is a supplier, the degree to which their participation counts towards satisfaction of the self-performance requirement varies. If materials or supplies are obtained from a certified manufacturer, one hundred percent (100%) of the cost of the materials or supplies counts toward the requirement. Sixty percent (60%) of the value of the commercially useful function performed by certified regular dealers counts toward satisfaction of the requirement. Only the bona fide commissions earned by manufacturer representatives or brokers for their performance of a commercially useful function counts toward meeting the requirement. Therefore, certified submitter/contractor/consultant must separate bona fide brokerage commissions from the actual cost of the supplies or materials provided to determine the actual dollar amount of participation that can be counted towards meeting the self-performance requirement.

For additional information on Counting please refer to Rule VII.F. in [DSBO Rules and Regulations](#).

D. Consultant/Contractor Prompt Pay

For contracts of one million dollars (\$1,000,000.00) and over, the Contractor/Consultant is required to comply with [§ 28-72](#), [§ 28-135](#), [§ 28-225 D.R.M.C.](#) regarding prompt payment to certified small businesses.

All contractors and consultants shall promptly render payment to all MWBE, SBE, or EBE subcontractors, subconsultants, joint venturers, suppliers, manufacturers, manufacturer's representatives and brokers regardless of tier on a contract as required under this section as follows:

1. The contractor or consultant and all obligated contractors shall have thirty-five (35) days to pay its respective MWBE, SBE, or EBE subcontractors following receipt of a responsive payment application or invoice for completed and accepted work. The MWBE, SBE, or EBE subcontractor will submit invoice for payment to the contractor with all submittal requirements as required by the contractor. Receipt of the MWBE, SBE, or EBE invoice, approval of the invoice by the contractor, and acceptance of all required work shall begin the 35-day deadline.

2. The contractor will have ten (10) days, or a reasonable time agreed upon between the contractor and subcontractor, from receipt of the MWBE, SBE, or EBE payment application or invoice to approve or reject the application or invoice.
 - a. If the contractor rejects the MWBE, SBE, or EBE application or invoice, the contractor must notify the MWBE, SBE, or EBE of the deficiency or dispute in writing, including the specific bases for rejection and supporting documentation, if any, and with sufficient information to clarify and resolve the dispute or deficiency, within 10 days, or some other reasonable agreed upon time, from receipt of the MWBE, SBE, or EBE invoice.
 - b. If the contractor fails to notify the MWBE, SBE, or EBE of the dispute or deficiency within 10 days, or some other reasonable agreed upon time, of receipt of the application or invoice, the contractor is required to pay the MWBE, SBE, or EBE invoice within thirty-five (35) days of the date of receipt of the application or invoice.
 - c. If the contractor notifies the MWBE, SBE, or EBE of the dispute or deficiency within 10 days, or some other reasonable agreed upon time, of receipt of the application or invoice, the 35-day deadline begins once the deficiency or discrepancy is resolved.
3. If there is no dispute or deficiency regarding the application or invoice and the invoice is approved by the contractor, and all MWBE, SBE, or EBE work has been accepted, then the contractor has 35 days from the date of the invoice to pay invoice, less any retainage owed, if applicable. Payment to the MWBE, SBE, or EBE subcontractor is required regardless of whether the contractor has been paid by the City.
4. The contractor must report payments made to the MWBE, SBE, or EBE subcontractors to DSBO on a monthly basis by no later than the 15th of the month.
5. MWBE, SBE, or EBE subcontractors must use B2G to confirm payments for work that was accepted and approved by the contractor on a monthly basis, or report any issues or disputes, including but not limited to unpaid invoices, by no later than the 20th of the month.
6. The contractor is required to respond to disputes or issues within three (3) business days. If disputes or issues are not resolved after 3 business days, DSBO may assist with resolution under Rule XI.
7. Failure to comply with the above may constitute cause to withhold payment from the contractor until payment to the MWBE, SBE, or EBE is satisfied.
8. The contractor shall ensure that tiered subcontractors comply with the Prompt Payment requirements.

E. Termination/Substitution/Reduction of MWBEs, SBEs or EBEs

A Contractor/Consultant that has been awarded a contract based upon a given level of MWBE, SBE, or EBE participation, or has duly added an additional MWBE, SBE, or EBE subcontractor to the contract, but intends to reduce, substitute or terminate an MWBE, SBE or EBE subcontractor must comply with D.R.M.C. Section 28-73 under MWBE Ordinance, or D.R.M.C. Section 28-226 under the SBE Ordinance, and Rule and Regulations regarding the intended reduction, substitution or termination. This includes, but is not limited to, instances in which a Contractor/Consultant seeks to perform work originally designated for an MWBE, SBE, or EBE subcontractor with its own forces or those of an affiliate, with a non- MWBE, non-SBE, or non-EBE firm, or with another MWBE, SBE, or EBE firm. At all times DSBO and the User Department will use best efforts or keep the other fully informed of the circumstances of any proposed reduction, termination or substitution.

In the event that a Contractor/Consultant intends to reduce, substitute or terminate an MWBE, SBE, or EBE firm, or otherwise modifies or eliminates all or a portion of work attributable to an MWBE, SBE, or EBE, except in cases where directed by the City, the following must be completed:

1. The Contractor/Consultant must provide notice in writing to the MWBE, SBE, or EBE subcontractor, copying DSBO and the User Department including the project manager, of its intent to request to terminate, substitute, or reduce and the reason for the request.
2. The Contractor/Consultant must give the MWBE, SBE, or EBE subcontractor at least five (5) business days to respond to the contractor's notice.
3. The DSBO must provide concurrence and the reasons therefore stated in a written notification with a copy to the User Department including the project manager that the prime contractor has good cause to substitute or terminate the firm.
4. In determining good cause to reduce, substitute or terminate the DSBO will consider all circumstances on a whole based on the following factors:
 - a. The MWBE, SBE, or EBE subcontractor fails or refuses to execute a written contract;
 - b. The MWBE, SBE, or EBE subcontractor fails or refuses to perform the work consistent with normal industry standards; provided, however, that good cause does not exist if the failure or refusal of the MWBE or SBE subcontractor to perform its work results from the bad faith or discriminatory action of the contractor;
 - c. The MWBE, SBE, or EBE subcontractor fails or refuses to meet the contractor's reasonable, nondiscriminatory bond requirements or insurance requirements;
 - d. The MWBE, SBE, or EBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e. The MWBE, SBE, or EBE subcontractor is ineligible to work on City projects because of suspension or debarment;

- f. The non-City owner or contractor has determined that the MWBE, SBE, or EBE subcontractor is not a responsible contractor;
 - g. The MWBE, SBE, or EBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;
 - h. The MWBE's, SBE's, or EBE's work cannot be counted toward participation in accordance with the DSBO Program Requirements;
 - i. An MWBE, SBE, or EBE owner dies or becomes disabled resulting in the MWBE's, SBE's, or EBE's inability to perform or complete its work on the contract; or
 - j. Other documented good cause that the DSBO in coordination with User Department determines compels the termination of the MWBE, SBE, or EBE subcontractor.
5. The MWBE, SBE, or EBE subcontractor shall be provided the opportunity to advise DSBO, the User Department and the contractor of the reasons, if any, why it objects to the proposed termination, and why DSBO should not concur with the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), DSBO may provide a response period no longer than five (5) business days.
6. In addition to post-award reductions, substitutions or terminations, the provisions of may apply to pre-award reductions, terminations of or substitutions affecting MWBE, SBE, or EBE firms by bidders or proposers prior to contract execution.

If DSBO concurs with the contractor's request to substitute, terminate or reduce the scope of work of the MWBE, SBE, or EBE subcontractor, the contractor/consultant must comply with the good faith efforts requirements to replace the terminated MWBE, SBE, or EBE subcontractor with another MWBE, SBE, or EBE firm certified to perform the scope of work.

If a contractor/consultant substitutes or terminates the MWBE, SBE, or EBE subcontractor or reduces the scope of work of the MWBE, SBE, or EBE subcontractor, without first complying with this section, DSBO may find the contractor in violation of D.R.M.C. and Rules and Regulations, and the Contractor/Consultant may be subject to enforcement and sanctions.

F. Contract Change Orders/Modifications/Amendments

If change orders or any other contract modifications are issued under the contract, the Contractor/Consultant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, § 28-133, § 28-223 D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change by the City.

If change orders or other amendments or modifications are issued under the contract that include amendment, change order, force account or otherwise, which change the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MWBE/SBE/EBE at the time of contract award, such change orders or contract modifications shall be promptly submitted to DSBO for notification purposes.

The Goal Commitment percent does not change with contract modifications; that value is static throughout the life of the contract and applies to the contract's full scope and budget, inclusive of above-described modifications thereto. As necessary to meet the Goal Commitment, the Contractor/Consultant shall allocate budget and scope, whether original or modified, to the project's existing MWBE/SBE/EBE subcontractors or solicit new MWBE/SBE/EBEs, in accordance with the DSBO Ordinance. The Contractor/Consultant shall supply to DSBO all required documentation of newly contracted subcontractors and modified subcontract scopes and values.

G. Post Award Good Faith Efforts

If awarded the contract, the successful contractor/consultant is required to make continuous good faith efforts to fulfill their certified small business goal commitment as outlined in the contract and/or on the executed Commitment to [MWBE/SBE/EBE] Participation form. Contractors/consultants are required to maintain records of these continuous efforts throughout the duration of the contract. Utilization of MWBE/SBE/EBE shall count toward the goal commitment, if any, to the extent that an MWBE/SBE/EBE is performing a commercially useful function corresponding to a NAICS Code in which it is certified. (Please refer to the Counting Participation section of this Handbook for further information).

In the event that a contractor or consultant must add or replace an MWBE/SBE/EBE subcontractor, subconsultant, joint venturer, supplier, manufacturer, manufacturer's representative or broker or in the event that a new scope of work is added to the ongoing contract, and the contractor or consultant in such event is in noncompliance with maintenance of the original goal commitment upon which the contract was awarded, due to failure to utilize additional MWBEs/SBE/EBE, the contractor or consultant shall be required to demonstrate good faith efforts.

Upon contract close or expiration, if the contractor/consultant fails to meet their MWBE/SBE/EBE commitment, all documentation related to their ongoing good faith effort will be reviewed by DSBO to determine if good faith efforts were achieved or if sanctions for failure to meet their certified small business utilization goal commitment are warranted.

The following is a list of actions that may be considered as part of the Contractor/Consultants ongoing good faith efforts. Other factors or types of efforts may be relevant in appropriate cases:

- 1) If pre-proposal meetings are scheduled by the city at which certified firms may be informed of subconsulting or joint venture opportunities under a proposed negotiated professional services

contract, including design, and construction services contract, attendance at such pre-proposal meetings is not mandatory; however, proposers are responsible for the information provided at these meetings.

- 2) The Contractor/Consultant must solicit through all reasonable and available means the interest of all MWBE/SBE/EBE certified in the scopes of work of the contract. The Contractor/Consultant must solicit the interest of such MWBE/SBE/EBEs within sufficient time, prior to the date of the proposal, to allow such MWBE/SBE/EBEs to respond to the solicitation. The proposer must determine with certainty if the MWBE/SBE/EBEs are interested by demonstrating appropriate in following up initial solicitations.

- 3) The Contractor/Consultant must select portions of the services of the contract to be performed by MWBE/SBE/EBEs in order to increase the likelihood that the participation goal will be achieved. This includes, where appropriate, using best efforts to break out contract service items into economically feasible units to facilitate MWBE/SBE/EBE participation as subconsultants or joint venturers, and for proposer self-performed work, as suppliers, manufacturers, manufacturer's representative and brokers, all reasonably consistent with industry and professional practice, even when the proposer would otherwise prefer to perform these services with its own staff. The proposer must identify what portions of the contract will be self-performed and what portions of the contract were selected for solicitation of statements of qualification or proposals from MWBE/SBE/EBEs. All portions of the contract not self-performed must be solicited for MWBE/SBE/EBE participation within the relevant certification and scopes of work. The ability or desire of a Contractor/Consultant to perform the services of a contract with its own staff does not relieve the Contractor/Consultant of the responsibility to meet the participation goal or demonstrate good faith efforts to do so.

- 4) The Contractor/Consultant, consistent with industry and professional practice, must provide MWBE/SBE/EBEs at a clearly stated location with timely, adequate access to and information about the plans, specifications, and requirements of the contract, including insurance requirements, if any, to assist them in responding to a solicitation.

- 5) The Contractor/Consultant must negotiate in good faith with interested MWBE/SBE/EBEs and provide written documentation of such negotiation with each such MWBE/SBE/EBE.

- 6) For each MWBE/SBE/EBE that the Contractor/Consultant contacted or attempted to subcontract/subconsultant or joint venture with, consistent with industry and professional practice, the Contractor/Consultant must supply a statement giving the reasons why the proposer and the

MWBE/SBE/EBE did not succeed in negotiating a subconsulting, supplier, manufacturer, manufacturer's representative, broker or joint venture agreement, as applicable.

- 7) The Contractor/Consultant must provide verification that it rejected each non-utilized MWBE/SBE/EBE because the MWBE/SBE/EBE was not qualified. Such verification shall include a verified statement of the proposals received from potential or utilized subconsultants, suppliers, manufacturers, manufacturer's representative or brokers on the contract, whether or not they are MWBE/SBE/EBEs. In making such a determination of not being qualified, the Contractor/Consultant shall be guided by the definition of qualified in section 28-35(47) D.R.M.C. For each MWBE/SBE/EBE found not to be qualified by the Contractor/Consultant, the verification shall include a statement giving the proposer's reasons for its conclusion. A Contractor's/Consultant's industry or professional standing or group memberships may not be the cause of rejection of an MWBE/SBE/EBE. A Contractor/Consultant may not reject an MWBE/SBE/EBE as being unqualified without sound reasons based on a reasonably thorough investigation and assessment of the MWBE/SBE/EBE's capabilities and expertise.
- 8) If requested by a solicited MWBE/SBE/EBE, the Contractor/Consultant must make reasonable efforts to assist interested MWBE/SBE/EBEs in obtaining alternative payment or performance guarantees or insurance as required by the city or by the Contractor/Consultant, provided that the Contractor/Consultant need not provide financial assistance toward this effort.
- 9) If requested by a solicited MWBE/SBE/EBE, the Contractor/Consultant must make reasonable efforts to assist interested MWBE/SBE/EBEs in obtaining necessary and competitively priced equipment, supplies, materials, or related assistance or services for performance under the contract, provided that the Contractor/Consultant need not provide financial assistance toward this effort.
- 10) The Contractor/Consultant must use the [DSBO Certified Small Business Database](#) to identify, recruit and place MWBE/SBE/EBEs.

H. Closeout Requirements

At or after substantial project completion, DSBO will review the contract and determine whether DSBO compliance requirements have been met to date, e.g. all termination/reductions/substitutions have been documented and reconciled, there are no outstanding audits, discrepancies, etc. If the Prime Contractor/Consultant has not met their goal commitment on the master contract, the

Contractor/Consultant is expected to have submitted Good Faith Effort documentation (please refer to the Post-Award Good Faith Efforts section of the DSBO Handbook).

If the Contractor/Consultant has not met all DSBO requirements, or additional reporting is required from the Contractor/Consultant to DSBO or the User Department, DSBO will send written notification to the Contractor/Consultant, with a copy to the User Department, regarding the remaining non-compliance issues, which Contractor/Consultant must rectify within the specified timeline.

If all compliance requirements have been met, DSBO will formally notify the Contractor/Consultant, with a copy to the User Department, that all DSBO requirements have been met and that DSBO is closing the contract file.

I. Instances of Non-compliance

For the duration of the contract term, DSBO shall monitor the Contractor's/Consultant's compliance with the DSBO requirements as outlined in the D.R.M.C., Rules and Regulations and the DSBO Handbook. The Contractor/Consultant shall fully cooperate with DSBO's compliance monitoring and auditing efforts, including DSBO's investigation of any alleged or suspected non-compliance by the Contractor/Consultant.

If DSBO has reason to believe that the Contractor/Consultant is not in compliance, DSBO shall give the Contractor/Consultant written notice of non-compliance, citing the reasons why the Contractor/Consultant is not in compliance, and giving the Contractor/Consultant a deadline to cure such non-compliance.

Prime Contractor/Consultant or certified subcontractor(s)/subconsultant(s) may file written complaints pertaining to violations of DSBO Requirements by contacting their assigned DSBO Compliance Project Manager.

The Contractor/Consultant shall carry out applicable DSBO Requirements in the award and administration of the contract. Failure by the Contractor/Consultant to carry out these requirements is a material breach of the contract, which may result in the termination of the contract or such other remedy as the City deems appropriate as, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Disqualifying the Contractor/Consultant from future procurement opportunities.

**DSBO Program Requirements Handbook (DSBO Handbook)
Signature Statement**

(***provided as a separate DSBO form at solicitation or post-contact execution)

*****Attention: this Signature Statement form is required to be completed, signed and submitted to DSBO. It will be incorporated as an exhibit to the Contractor’s/Consultant’s executed contract with the City.*****

The undersigned firm has read and agrees to comply with the DSBO Ordinance, Rules and Regulations and requirements outlined in the DSBO Handbook (collectively, the “DSBO Program Requirements”) should it be awarded the subject project. Additionally, should the undersigned be awarded the project, it will provide timely and accurate submissions of the required compliance documentation to DSBO and will promptly advise DSBO of any changes to their primary point(s) of contact responsible for DSBO reporting. If requested by a certified subcontractor/subconsultant, the Contractor/Consultant will make the DSBO Handbook available to subcontractors/subconsultants, regardless of tier.

The Contractor/Consultant shall carry out the aforementioned DSBO Program Requirements in the award and administration of its contracts, inclusive of any pertinent flow down provisions included in subcontract/subconsultant agreements regardless of tier. Failure by the Contractor/Consultant to comply with or implement these requirements is a material breach of the Contract, which may result in the termination of the Contract or such other remedy as the City deems appropriate.

Bidder/Proposer or Prime (Name of Firm):

Firm’s Representative:

Title:

Signature (Firm’s Representative): Date:

Address:

City:	State:	Zip:
Phone:	Email:	

Appendix: Terms and Definitions

Bidder means a business enterprise that submits a bid on a construction contract that is offered for competitive bidding by the city or otherwise offered by a private owner.

Broker means a business enterprise that performs a commercially useful function as an intermediary, for a fee, in the acquisition of materials, supplies or equipment, regardless of whether or not it takes title to such materials, supplies or equipment, for the city or a private owner or its contractors, consultants or suppliers, but is not a manufacturer, manufacturer's representative or regular dealer. Only bona fide commissions earned by a broker for its activities in performing a commercially useful function on a city contract shall be counted toward the MWBE participation goal as set out in sections 28-59 and 28-63, D.R.M.C., for Construction; section 28-129, D.R.M.C., for Goods and Services; or participation under section 28-212, D.R.M.C., for SBE. A packager shall be considered and treated as a broker.

Business enterprise means an individual, sole proprietorship, corporation, limited liability company, partnership, limited partnership, limited liability limited partnership, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed or registered, as applicable, owned and controlled by person(s) who are citizens of the United States or lawful permanent residents of the United States, and otherwise authorized to do business in the State of Colorado.

Certification means completion by a business enterprise of an application procedure to be developed by the DSBO, and formal authorization by the director to participate as an MWBE, SBE, SBEC or EBE under Article III or Article VII. Certification neither represents nor implies that a business enterprise is qualified to perform on a contract, nor that it performs a commercially useful function.

City means the City and County of Denver and its participating User Departments.

Commercially useful function means an MWBE, SBE, or EBE is responsible for the execution of a distinct element of the work of a contract and is carrying out the work by actually performing, maintaining control of, managing, and supervising the work involved, or fulfilling responsibilities as a joint venturer. In determining whether an MWBE, SBE, or EBE is performing or has performed a commercially useful function, DSBO will analyze and evaluate the amount of work subcontracted; the amount paid to the MWBE, SBE, or EBE in proportion to the work actually performed; whether the MWBE, SBE, or EBE is performing functions, including but not limited to being responsible for, with respect to materials and supplies used for the contract work; negotiating price; determining quantity and quality; ordering materials; performing installation where applicable; paying for the materials; credit claimed toward participation goal achievement, and other relevant factors. Commercially useful function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

Competitive selection process has the meaning ascribed to that phrase in sections 2.3.3(A) and 2.11.3(8) of the Denver City Charter, and in D.R.M.C. sections 5-19 and 20-56, as that meaning may pertain to a contract(s) at issue.

Conduit means an MWBE, SBE, SBEC, or EBE that knowingly agrees to pass the scope of work for which it is listed for participation and is scheduled to perform or supply on a contract, to a non-MWBE/SBE/SBEC/EBE firm or does not carry out the responsibilities required for MWBE/SBE/SBEC/EBE participation by actually performing, managing, controlling and supervising the work under a contract. In this type of relationship, the MWBE/SBE/SBEC/EBE has not performed a commercially useful function and the arranged agreement between the two (2) parties is not consistent with standard industry practice. This arrangement does not meet the commercially useful function requirement, and therefore the MWBE/SBE/SBEC/EBE's participation does not count toward the MWBE/SBE/EBE goal on the contract. Conduit is also referred to as a passthrough.

Construction means those areas of construction, reconstruction and remodeling as encompassed within the city's contracting processes authorized by the Charter and ordinances of the city, including construction management services. This definition shall encompass design-build contracts as appropriate.

Consultant means a business enterprise that enters into a contract with the city, in privity of contract with the city, for professional design and construction services or enters into such a contract with a private owner, in privity of contract with such private owner, for such services on a building or aviation or aeronautical facility, or improvements thereto, situated on real property owned by the city.

Contract means any city contract for construction or for professional design and construction services authorized by any provision of the Charter or ordinances of the city, excepting only those contracts to federal DBE requirements. Contract shall include other contracts ancillary to cooperative agreements or understandings with other public and private agencies for purposes of development of public facilities, park and recreational facilities, museums, zoological and other gardens, collections of natural history, and observatories, if such contracts provide for funding in whole or in part by the city and provide for utilization of such funds for the purpose of construction or professional design and construction services for any public facility or area owned or leased by the city or situated on real property owned or leased by the city. Notwithstanding the foregoing, contract shall also include construction or professional design and construction services contracts for buildings or aviation or aeronautical facilities or improvements thereto, constructed by private owners on real property owned by the city, without regard to the utilization of city funding.

Contractor means a business enterprise that enters into a competitively bid or otherwise competitively selected construction contract with the city, in privity of contract with the city, or enters into such a construction contract with a private owner, whether or not bid, in privity of contract with such private

owner for such work on a building or aviation or aeronautical facility, or improvements thereto, situated on real property owned by the city. Contractor includes general contractors and prime contractors.

Defined selection pool contract or concession agreement means a contract or concession agreement which is determined by the director to be appropriate for restriction of the selection of the contractor, consultant or concessionaire and, as applicable, subcontractors, subconsultants and suppliers on such contract or concession agreement to the pool of certified SBEs, SBECs, or EBEs, as determined by the director.

Department head means the manager or director of the User Department entering into contract(s) utilizing MWBE, SBE, SBEC or EBE participation, or such person's designee.

Design-build contract means a contract for the procurement of both the design and the construction, reconstruction or remodeling of a public work in a single contract with a single design-build contractor or combination of such contractors that are capable of providing the necessary design and construction, reconstruction or remodeling services.

Director means the director of the division of small business opportunity or successor agency, or such director's designee.

Distributor means an entity that buys noncompeting products or product lines, warehouses them, and resells them to retailers or direct to the end users or customers. Most distributors provide strong manpower and cash support to the supplier or manufacturer's promotional efforts. They usually also provide a range of services (such as product information, estimates, technical support, aftersales services, credit) to their customers.

DSBO means the Division of Small Business Opportunity.

DSBO required forms means the certifications, letters of intent, commitment forms and other forms and documents developed by DSBO and required by DSBO to confirm and evaluate a bidder's or proposer's commitment to utilization of certified firms and other DSBO program requirements. No unauthorized alteration or modification of a DSBO required form is permitted.

DSBO website means the posting location for various documents referenced in the DSBO Handbook. Current website address is www.denvergov.org/dsbo.

Emerging business enterprise or EBE means a business enterprise that is certified by the director under Article VII as meeting all of the requirements for certification set forth in sections 28-205 and 28-206, D.R.M.C.

Goal Commitment means a percentage of certified small business utilization that the bidder/proposer is committing to as evidenced by the Commitment to [MWBE/SBE/EBE] Participation form. Goal Commitment is formally entered into the contract; the Contractor/Consultant is required to remain in

compliance with meeting their specific Goal Commitment for the duration of the contract. Also referred to as MWBE/SBE/EBE participation commitment.

Good faith efforts means substantive and meaningful good faith actions undertaken during pre/post-award by a Bidder/Proposer to achieve the certified small business participation goal or by Contractor/Consultant to achieve their contractually-stipulated small business goal commitment.

Integrated contract means contract or contracts for construction procured and awarded for a city construction project or program, including where the awarded contractor may be authorized to conduct bidding or solicit proposals of contractors or subcontractors under city requirements, without a specific predetermined project or scope of work. Once specific scope or scopes of work are identified, various projects, separate procurements, or individual work orders or task orders may be authorized, and the contractor may proceed to complete the work under the separate contracts, projects or the individual work orders or task orders.

Joint venture means an association of two (2) or more business enterprises to constitute a single business enterprise to perform a city construction or professional design and construction services contract for which purpose they combine their property, capital, efforts, skills and knowledge and in which endeavor each joint venturer is responsible for a distinct, clearly defined portion of the work of the contract, performs a commercially useful function, and whose share in the capital contribution, control, management responsibilities, risks and profits of the joint venture are equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the joint venturers and their relationship and responsibility to the contract. Only that portion of the total dollar value of a joint venture contract equal to the distinct, clearly defined work that the MWBE/SBE performs with its own forces as a commercially useful function will count towards MWBE/SBE participation.

Letter of intent means a DSBO required form that shall be a written communication from a project bidder/proposer or Contractor/Consultant to the City with respect to a contract, evidencing an understanding between an MWBE/SBE/EBE and the Bidder/Proposer or Contractor/Consultant that such MWBE/SBE/EBE has or will enter into a contractual relationship with the Bidder/Proposer or Contractor/Consultant on such contract or that such Bidder/Proposer or Contractor/Consultant will self-perform as an MWBE/SBE/EBE on such contract. Form may be required at solicitation or post-contract execution depending on procurement type.

Manufacturer means a business enterprise that operates or maintains a factory or establishment that produces, or substantially alters on the premises the materials, supplies or equipment provided to contractors, consultants, subcontractors, subconsultants, suppliers, brokers or manufacturer's representatives on a contract, required under the contract and of the general character described by the Page 11 of 56 contract specifications. For manufacturers, one hundred percent (100%) of the value the

materials, supplies or equipment provided by an MWBE/SBE/EBE under a contract shall count toward MWBE/SBE/EBE participation.

Manufacturer's representative means a business enterprise that sells products for one (1) or more manufacturers. A manufacturer's representative does not take legal title to or physical possession of the products that it sells, such products generally being sent directly from the manufacturer to the contractor or subcontractor purchasing the products. Only bona fide commissions earned by a manufacturer's representative in performing a commercially useful function on a contract shall be counted toward the participation goal as set out in sections 28-59, 28-63, 28-129, and 28-212, D.R.M.C.

Mentor-Protégé means a relationship between a subcontractor certified as an MWBE/SBE/EBE (protégé) and a more experienced contractor (mentor) approved by DSBO. In a mentor-protégé relationship, the mentor provides guidance on technical, financial, bonding, equipment, and personnel assistance to the protégé. The purpose of the relationship is to increase the capacity of MWBE/SBE/EBEs to perform city contracts.

On-call construction or design contracts or on-call projects means contracts that are procured and awarded without a pre-determined specific project or scope of work. Once a specific scope of work is identified, individual work orders or task orders are authorized, and the contractor proceeds to complete the work under the individual work order or task order.

Packager means a business enterprise that performs a commercially useful function in the packaging of goods for the city or a private owner or its contractors, consultants, manufacturers, manufacturer's representatives or suppliers but is not itself a regular dealer, manufacturer, or manufacturer's representative. A packager shall be considered and treated as a broker.

Participation goal means the specific MWBE, SBE or EBE goal established for a particular contract or city project, or at the City's option for separate procurements under an integrated contract, based upon the availability of certified firms in the scope(s) of work of the contract.

Professional design and construction services means those areas of services ancillary to construction as encompassed within the city's contracting processes authorized by the charter and ordinances of the city, including, but not limited to, engineering, architectural, testing, and planning services and all other applicable professional services related to construction projects.

Proposal means an offer to perform construction or professional design and construction services pursuant to a negotiated or otherwise competitively selected city contract with either the city or a private owner, and whether in response to a request for qualifications, request for proposals or otherwise. The department head shall designate the proposal, and the date of receipt for each solicitation of proposers subject to Article III and its divisions or Article VII.

Proposer means a business enterprise that submits a proposal on a city construction contract or professional design and construction services contract that is negotiated and not competitively bid or that utilizes a competitive selection process.

Qualified, with respect to good faith efforts, means that a business enterprise has the financial ability, expertise, skill, experience, and access to the necessary staff, facilities and equipment to complete contract(s) or subcontract(s) that it may undertake on projects. The city makes no representations as to the qualification of any applicant business enterprise MWBE/SBE/EBE.

Regular dealer means a business enterprise that owns, operates or maintains a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the contract specifications and required for the performance of the contract are bought and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the business enterprise must be an established, regular business engaged in, as a substantial and material portion of its business, and in its own name, the purchase and sale or lease of the products in question. A regular dealer is presumed to keep such materials, supplies, articles or equipment in stock, but must in any event bear the risk of loss of such items. A regular dealer in such bulk items as steel, cement, gravel, stone, asphalt and petroleum products need not own, operate or maintain a place of business if it both owns and operates distribution equipment for the products. Any supplementation of a regular dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract by-contract basis. For regular dealers, sixty (60) percent of the value of the commercially useful function Page 14 of 56 performed by the MWBE/SBE/EBE shall be counted toward the participation goal. Brokers, conduits, packagers, manufacturers and manufacturer's representatives shall not be regarded as regular dealers within the meaning of this term.

Responsiveness means that for competitive solicitations, bidder/proposal/submitter has addressed all the DSBO requirements and specifications outlined in the solicitation document and is able to move forward in the procurement consideration process.

Revocation means DSBO's action to decertify a business enterprise and remove the business enterprise from the DSBO program.

Small business enterprise or SBE means a business enterprise that is certified by the director under Article V and Article VII as meeting all of the requirements for certification set forth in sections 28-205 and 28-206, D.R.M.C.

Subcontractor or subconsultant means a business enterprise that has entered into a contract with a general contractor or prime contractor to provide goods or services pursuant to a contract between the general contractor or prime contractor and the city. A subcontractor or subconsultant means a business enterprise that either directly contracts with a contractor or consultant or directly contracts with subcontractors or subconsultants under such contractor or consultant on a city contract, and which

business enterprise will provide services or perform work under agreements with the contractor or consultant or with other subcontractors or subconsultants under such contractor or consultant.

Supplier means a business enterprise that either directly contracts with a contractor or consultant or directly contracts with subcontractors or subconsultants under such contractor or consultant on a city contract, and which business enterprise will provide materials, supplies or equipment under agreements with the contractor or consultant, or with other subcontractors or subconsultants under such contractor or consultant. A supplier may be a regular dealer, manufacturer, manufacturer's representative or broker. The participation goal shall be counted in accordance with the function performed by the certified supplier under a contract and determined on a per-contract or per-project basis.

Teaming agreement means an agreement between a prime or general contractor and an MWBE/SBE/EBE subcontractor or an agreement between a consultant and an MWBE/SBE/EBE subconsultant to: (a) Develop the capacity of the MWBE/SBE/EBE under the bid or proposal to the city; and Page 15 of 56 (b) Describes how the parties are going to share work under the bid or proposal for the primary scope of work under the bid or proposal.

User Department/Agency means City agency undertaking the procurement for a specific project (e.g. DEN, DOTI).

Utilization Plan (MWBE/SBE/EBE) means a completed DSBO Utilization Plan form, prepared by or on behalf of the bidder or proposer as required by DSBO and set forth in the applicable contract procurement documents that describes the bidder's or proposer's approach to satisfying the small, emerging or minority, and women-owned business enterprise requirements including but not limited to the participation goal.

Wholesaler means a person or firm that buys large quantities of goods from various producers or vendors, warehouses them, and resells to retailers. Wholesalers who carry only noncompeting goods or lines are called distributors.