



Indicate with (X) Acknowledgement and Included	DSBO DBE Contractual Requirements Subcontractor Agreement Checklist
Civil Rights Act of 1964 Title VI, 49 CFR Part 26.13(b) - Non-Discrimination	
	<ul style="list-style-type: none"> • Statement of Non-Discrimination Clause
	<ul style="list-style-type: none"> • Mandatory flow-down provision statement for Non-Discrimination Clause to be incorporated in all subcontract agreement regardless of tier
<u>Suggested Language for Subcontract:</u>	<p><i>The contractor, sub recipient 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 recipient deems appropriate, which may include, but is not limited to:</i></p> <p><i>(1) Withholding monthly progress payments;</i></p> <p><i>(2) Assessing sanctions;</i></p> <p><i>(3) Liquidated damages; and/or</i></p> <p><i>(4) Disqualifying the contractor from future bidding as non-responsible.</i></p>
Counting DBE Participation and Reporting, 49 CFR Part 26.37, 26.55	
	<ul style="list-style-type: none"> • Firms identified to count toward DSBO’s established participation goal must be certified by DSBO in that specified program and certified in the applicable NAICS code(s) to count toward the participation goal.
	<ul style="list-style-type: none"> • Only the value of the work actually performed by the certified DBE will count toward the DBE participation goal
	<ul style="list-style-type: none"> • DSBO reserves the right conduct site visits to ensure certified firm is performing a commercially useful function
Contractor Prompt Payment, 49 CFR Part 26.29	
	<ul style="list-style-type: none"> • In accordance with 49 CFR §26.29, the City and County of Denver established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor’s receipt of each payment from the City and County of Denver.



<p><u>Suggested Language for Subcontract:</u></p>	<p><i>The Contractor shall ensure that:</i></p> <p>(a) Each contractor on a city contract with certified DBEs as subcontractors shall pay the respective subcontractors any invoiced and undisputed amounts for accepted and completed work within thirty (30) days of the contractor's receipt of the subcontractor's invoice. Payment to the subcontractor shall be timely made as required under this section regardless of whether the contractor has been paid for the same work or payment period. For the purposes of the 49 CFR Part 26.29 , any subcontractor, regardless of whether that subcontractor holds a city contract, may be required to make payments to DBEs as set forth in this section.</p> <p>(b) Contractor is required to provide written notice to its subcontractor of either approval or rejection of the subcontractor's invoice within ten (10) days of receipt. If the invoice is rejected, the written notice to the subcontractor shall include the deficiencies or disputes regarding the invoice.</p> <p>(c) Failure to comply with the payment requirements in this section may be grounds for withholding of payment by the city to the contractor and may be grounds for breach of the city contract.</p> <p>(d) The payment requirements under this section shall apply to DBE subcontractors regardless of tier.</p>
<p>Removal/Termination/Substitution for Good Cause from Contract 49 CFR Part 26.53 (f)</p>	
	<ul style="list-style-type: none"> • No "Termination for Convenience" clause
	<ul style="list-style-type: none"> • Requirement clause of "Removal/Termination/Substitution" of a DBE contractor regardless of tier
	<ul style="list-style-type: none"> • Requires consent of DSBO and documentation of good cause
	<ul style="list-style-type: none"> • Agreement states the process to initiate a removal/termination/substitution
<p><u>Suggested Language:</u></p>	<p>(a) A contractor that has been awarded a contract based upon a given level of DBE participation, or has duly added an additional or substitute DBE subcontractor to the contract in accordance with this division 3, but intends to substitute or terminate an DBE subcontractor must comply with this 49 CFR 26.53(f)(3), as directed by the DSBO and the user department, regarding the intended substitution or termination. This includes, but is not limited to, instances in which a contractor seeks to perform work</p>



with its own forces or those of an affiliate, a non-DBE firm, or with another DBE as a substitution for an originally designated for an DBE subcontractor.

(b) In the event that a contractor or consultant intends to substitute or terminate an DBE subcontractor, subconsultant, joint venturer, supplier, manufacturer, manufacturer's representative or broker, or otherwise modify or eliminate all or a portion of work attributable to an DBE, except in cases where directed by the city, the following must be completed:

(1) The contractor must provide notice in writing to the DBE subcontractor, with a copy to the DSBO and user department, of its intent to request to terminate or substitute, and the reason for the request.

(2) The contractor must give the DBE subcontractor at least five (5) business days to respond to the contractor's notice.

(3) The DSBO, in conjunction with the user department, must provide concurrence and the reasons therefor stated in a written notification that the prime contractor has good cause to substitute or terminate the firm.

(4) In determining good cause to substitute or terminate the DSBO will consider all circumstances as a whole based on the following factors:

(i) The DBE subcontractor fails or refuses to execute a written contract;

(ii) The DBE 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 DBE subcontractor to perform its work results from the bad faith or discriminatory action of the contractor;

(iii) The DBE subcontractor fails or refuses to meet the contractor's reasonable, nondiscriminatory bond requirements or insurance requirements;

(iv) The DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The DBE subcontractor is or has become ineligible to work on city projects because of suspension or debarment;



(vi) The non-city owner or contractor has determined that the DBE subcontractor is not a responsible contractor;

(vii) The DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;

(viii) The DBE's work cannot be counted toward participation in accordance with this article III and its divisions;

(ix) An DBE owner dies or becomes disabled resulting in the DBE's inability to perform or complete its work on the contract; or

(x) Other documented good cause that the user department or DSBO determines requires termination of the DBE subcontractor.

(5) The DBE subcontractor shall be provided the opportunity to advise the DSBO, user department and the contractor of the reasons, if any, why it objects to the proposed termination, and why the DSBO should not concur with the contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), the DSBO may provide a response period shorter than five (5) business days.

(6) In addition to substitutions or terminations occurring during contract performance, the provisions of this section may apply to reductions in scope of work or substitutions of DBE firms by bidders or proposer prior to contract execution.

(c) If the DSBO and the user department concurs with the contractor's request to substitute, terminate or reduce the scope of work of the DBE subcontractor, the contractor must comply with good faith efforts requirements to replace the terminated DBE subcontractor with another DBE firm certified to perform the scope of work.

(d) If a contractor substitutes or terminates the DBE subcontractor, or reduces the scope of work of the DBE subcontractor, without first complying with 49 CFR 26.53(f)(3), the DSBO may find the contractor in violation of this division and the contractor may be subject to enforcement and sanctions.

Scope of Work Changes, Amendments, Modifications 49 CFR Part 25.45 and 26.55

- States process for changes, amendments, change orders



<p><u>Suggested Language:</u></p>	<p>The DBE Goals shall apply to the performance/value of all obligations under this Contract, including any Changes, Modifications, Amendments and Change Orders whether initiated by the contractor or City and County of Denver.</p>
<p>Joint Venture between DBE certified firm and/or Non-DBE certified firm</p>	
	<ul style="list-style-type: none"> • A joint check is a two-party check between a DBE, a prime contractor and a regular dealer of materials/supplies. All joint check arrangements with DBE subs must be pre-approved by DSBO and must strictly adhere to the joint check requirements set forth in USDOT guidance regarding same. At a minimum, the request must be initiated by the DBE to remedy a financial hardship for a specific period of time. DSBO will closely monitor the use of joint checks to ensure that the independence of the DBE firm is not compromised. Joint check usage will not be approved merely for the convenience of the prime contractor.
<p>Concise and Completed Documentation Assurance (Letter of Intent, Subcontract Agreement, Change Orders, etc)</p>	
	<ul style="list-style-type: none"> • Company Name, Signatures and Dated

ADD: