



DISADVANTAGED/SMALL BUSINESS ENTERPRISE PROGRAM  
49 CFR PART 26

UPDATED AND ELECTRONICALLY SUBMITTED TO:

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
1961 Stout Street Suite 13-301  
Denver, CO 80294

## POLICY STATEMENT

### OBJECTIVES/POLICY STATEMENT

The City of Colorado Springs, DBA Mountain Metropolitan Transit (MMT), has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MMT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, MMT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MMT to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT -assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

A Contract Specialist has been delegated as the DBE Liaison Officer for MMT. In that capacity, the Contract Specialist is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MMT in its financial assistance agreements with the Department of Transportation.

MMT has previously disseminated this policy statement to the City Council and all of the components of our organization. MMT has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Distribution of the policy statement will be accomplished through publication on our website.

/s/Craig Blewitt  
Craig Blewitt  
Transit Services Manager

October 1, 2020  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1, 26.23 Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Section 26.3 Applicability**

The recipient of federal funds authorized by 49 U.S.C. 47101, *et seq.*

MMT is the recipient of federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

MMT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### **Section 26.5 Definitions**

MMT will adopt the definitions contained in Section 26.5 for this program.

### **Section 26.7 Non-discrimination Requirements**

MMT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MMT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11(b)**

MMT will report DBE participation to DOT as follows:

MMT will report DBE participation on a semi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT assisted contracts.

#### **Bidders List: 26.11 (c)**

MMT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

MMT will collect this information by including a "Solicitation Statistics" form in the RFP and bid documents that gather the following information:

- Firm Name
- Firm Address
- DBE Status
- Company's Type of Work
- Month/Year Firm started
- Annual Gross Receipts of the Firm
- Name of Solicitation
- Solicitation Number

### **Section 26.13 Federal Financial Assistance Agreement**

MMT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance: 26.13(a)

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

#### Contract Assurance: 26.13b

MMT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since MMT receives a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, MMT will continue to carry out this program until all funds from DOT financial assistance have been expended. MMT will provide to DOT updates representing significant changes in the program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

MMT has designated the following individual as our DBE Liaison Officer:

Patty Bailey, Contract Specialist, 1015 Transit Drive, Colorado Springs, CO 80903 Phone: 719-385-7431

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MMT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to MMT's Transit Services Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all work groups to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
6. Analyzes MMT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process in Colorado.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of MMT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. MMT has made the following efforts to identify and use such institutions:

MMT will consult with other DBE programs to see if any exist within the state of Colorado. Only one such bank, to date, has been found in Colorado, the Native American Bank. The Native American Bank is a federally-chartered bank that is owned by Native American Bancorporation, a bank holding company that has been organized by a group of Tribal Nations and Alaska Native Corporations.

MMT will encourage to the extent possible that prime contractors use such institutions.

### **Section 26.29 Prompt Payment Mechanisms**

MMT will include the following clause in each DOT-assisted prime contract:

“The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) calendar days after the Contractor has received payment from the City of Colorado Springs.”

Failure of the prime contractor to comply with the above clause may be construed to be a breach of contract and subject to contract termination. The Contracting Division will take steps to resolve any prompt payment violations as expeditiously as possible.

### **Section 26.31 Directory**

MMT accesses a combined statewide UCP directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The State revises the Directory daily as required. MMT will make the Directory available as follows: Through promotion of the websites where the directories are located - Colorado Department of Transportation and the City/County of Denver. The UCP Directory may be found online at [www.coloradodbe.org](http://www.coloradodbe.org) and <http://www.denvergov.org>.

MMT also uses the Small Business Associations' directory which is set up in a way that directs contractors to potential DBE firms and promotes small businesses doing business with other small businesses. There may be businesses in this directory that are not certified as DBEs but who provide resources to small businesses. For example, there may be a small business that sets up accounts with credit card companies for small businesses. That particular business would not be in a North American Industry Classification

System (NAICS) that MMT would request procurement for. However, that small business would be of use to another small business.

### **Section 26.33 Overconcentration**

MMT has not identified that overconcentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

MMT has a business development program. The rationale for the program is small businesses are provided the opportunity to meet with Transit. Businesses are given information on "How to do Business with MMT. All classes or events hosted by MMT are publicized through the local newspapers, minority publications and also on our website.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

MMT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. MMT will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. MMT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. MMT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by site inspections by the project manager and requiring a certification that the designated DBE belongs to a certified DBE program.
4. MMT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39 Small Business Participation**

MMT has incorporated, as of March 1, 2012, the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):



The SBE Program areas are Purchasing Transactions of \$15,000 or less; Professional Services Contracts of \$50,000 or less; and Construction Contracts of \$25,000 or less. The objective is to have at least fifty percent (50%) or more of the total eligible dollar base amounts be awarded to SBEs.

For MMT's Small Business Enterprise Program, a SBE is:

- A qualified Small Business Enterprise, as defined by the United States Small Business Administration (SBA):
  - Is not dominant in its field of operations
  - Qualifies as a small business concern under Title 13, Code of Federal Regulations, part 121 (13 CFR 121)
    - 500 employees for most manufacturing and mining industries, and
    - \$7 million in average annual receipts for most non-manufacturing industries
- a. In order to facilitate competition by small business concerns, MMT will:
  - i. Require prime contractors to consider participation by firms certified as Small Business Enterprises and/or Emerging Small Business when developing its team and articulating its approach for the projects in accordance with 49 CFR Part 26.
    - 1. Regional Transportation District in Denver, CO certifies SBEs and maintains a SBE Directory inclusive of the five county radiuses. The eligible firms are classified by personal net worth (PNW) and average gross receipts.
  - ii. Require bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

MMT does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment C to this program. This section of the program will be updated on a triennial basis.

In accordance with Section 26.45(f) MMT will submit its triennial overall goal to the FTA on August 1<sup>st</sup> every three years beginning 2011. Before establishing the overall goal each year, MMT will consult, at a minimum, with the DBE directory published by CDOT, Census Bureau Data, local Chambers of Commerce, Community Organizations, General Contractors, and City Departments who receive federal funds to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MMT efforts to establish a level playing field for the participation of DBEs.

2. Following this consultation, MMT will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection at [www.coloradosprings.gov](http://www.coloradosprings.gov) for 30 days following the date of the notice, and for a 30 day comment period. The notice will be issued through different types of media, including but not limited to available minority- focus media, and websites. Under normal circumstances, MMT will issue this notice by June 1 on a triennial bases. For the 2021 – 2023 goal update period, per guidance put out by the Department of Transportation on Civil Rights during the COVID-19 Public Health Emergency, this date has been extended to 1 October 2020.

The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to FTA will include a summary of information and comments received during this public participation process and our responses.

MMT will begin using our overall goal on October 1 of each year, unless we have received other instructions from FTA. If MMT establishes a goal on a project basis, MMT will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.49 Transit Vehicle Manufacturers Goals**

MMT will require each transit vehicle manufacturer, as a condition of being

authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

### **Section 26.51 Meeting Overall Goals/Contract Goals**

MMT will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, MMT will:

- 1.) Participate in Local Business Opportunity Workshops held in Colorado Springs. Other agencies that normally participate are El Paso County and Colorado Springs Utilities. The workshop will offer information from each of the 3 agencies on “how to do business with” and the types of opportunities available for contractors and vendors. DBE/SBE information will also be available for distribution.
- 2.) Participate in the annual Reverse Vendor Trade Show (RVTS) sponsored by the Rocky Mountain Governmental Purchasing Association (RMGPA) which is normally held at the Denver Police Protective Association Event Center in Denver, Colorado. Over 500 individuals representing over 350 companies are anticipated to be in attendance at the show annually. DBE/SBE information regarding certification and programs will be available for interested firms. This location continues to allow for a larger outreach to businesses located throughout the State of Colorado. MMT will continue their involvement in this annual event.
- 3.) MMT’s Procurement Office participates in every pre-bid meeting on projects where federal funds are utilized and the DBELO participates in every pre-bid meeting where DBE goals for the project are set. A detailed explanation is given to all attendees on the utilization of CDOT’s DBE directory and the City/County of Denver’s SBE Directory and what constitutes a good faith effort. This on-going participation is anticipated to increase the prime contractors’ and consultants’ awareness of the DBE/SBE program and requirements. The DBE/SBE directories will now be utilized by the prime contractors in their goal attainment efforts for our projects.
- 4.) Planning and participating in DBE/SBE training seminars and workshops.
  - a. Create DBE/SBE presentations to do speaking engagements among the DBE/SBE communities on How to Do Business with MMT and post it to the City’s website, [www.coloradosprings.gov](http://www.coloradosprings.gov) and minority publications.
  - b. Attend or conduct Open House Meetings to encourage local general contractors, small business and potential DBE firms to learn about upcoming procurement opportunities on MMT’s Capital Projects List

- c. The DBE Liaison Officer will conduct a technical assistance workshop with contractors working on MMT federally assisted projects to discuss various topics including the small business plan and other contracting opportunities
  - d. The DBE Liaison Officer will partner with agencies including but not limited to the Colorado Springs Small Business Development Center, RMGPA and Regional Business Alliance seeking presentation opportunities and/or outreach efforts to the DBE/SBE community
  - e. The DBE Liaison Officer will meet with the Purchasing Office to review federally assisted upcoming procurements, in advance, to target participation either through the DBE program or for the small business plan
  - f. The DBE Liaison Officer will work with the Procurement Office to include contract goals to meet any portion of the overall goal the DBE Liaison Officer does not project being able to meet using race neutral means, on federally assisted contracts that have subcontracting opportunities
- 5.) Update the City's website to ensure ease of use and user friendly ways to learn How to Do Business with MMT and include more DBE/SBE information.
- 6.) Ensure the links from the Colorado Department of Transportation DBE/SBE site to MMT's DBE/SBE site are correct and provides value added information.

MMT will use contract goals to meet any portion of the overall goal MMT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

MMT will establish contract goals only on those FTA-assisted contracts that have subcontracting possibilities. MMT need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

MMT will express our contract goals as a percentage of total amounts of a FTA-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

#### **Award of Contracts with a DBE Contract Goal: 26.53(a)**

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, MMT will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

#### **Evaluation of Good Faith Efforts: 26.53(a) & (c)**

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

MMT will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before committing to the performance of the contract by the bidder/offeror.

#### **Information to be submitted: 26.53(b)**

MMT treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration: 26.53(d)

Within 10 days of being informed by MMT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: MMT, Transit Services Manager. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror 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 to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Procurement will send the bidder/offeror 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 to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is Terminated/Replaced on a contract: 26.53(f)

MMT requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MMT's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to MMT its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to MMT prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MMT of why it objects to the proposed termination.

In those instances where “good cause” exists to terminate a DBE’s contract, MMT will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. MMT will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

In this situation, MMT will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontract, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, MMT’s Contracting Office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of MMT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of the DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

MMT will count DBE participation toward overall and contract goals as provided

49 CFR Part 26

in 49 CFR 26.55.



## **SUBPART D – CERTIFICATION**

### **Section 26.61 - 26.73 Certification Process**

MMT does not conduct a certification process. MMT will refer all interested businesses to the Colorado Department of Transportation Civil Rights & Business Resource Center or the City/County of Denver's Division of Small Business Opportunity – the two entities in the State of Colorado who will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. MMT will concur with their certification decisions based on the facts as a whole.

For more information about the certification process or to apply for certification, firms should contact:

Division of Small Business Opportunity (DSBO)  
Office of Economic Development  
201 West Colfax Avenue, Dept. 907  
Denver, CO 80202  
Phone: 720-913-1803  
Email: [DSBO@denvergov.org](mailto:DSBO@denvergov.org)

Greg Diehl, Manager  
CDOT Civil Rights & Business Resource Center  
4201 E. Arkansas Avenue  
Denver, CO 80222  
Phone: 303-757-9599  
Email: [Edot\\_civilrights@state.co.us](mailto:Edot_civilrights@state.co.us)

Certification application forms and documentation requirements are found online at <https://denver.mwdbe.com/vendorstart.asp> or <http://www.coloradodot.info/business/equal-opportunity/dbe/certification.html> to this program.

### **Section 26.81 Unified Certification Program**

MMT, as a DOT recipient, is a member of the Unified Certification Program (UCP) administered within the State of Colorado. The UCP will meet all of the requirements of this section. MMT will use and count for DBE credit only those DBE firms certified by the Colorado UCP. The following is a brief description of the UCP: In accordance with the requirements of 49 CFR part 26.81, DOT recipients in Colorado adopted a Unified Certification Program. The original UCP Plan was approved in 2002 and revised in 2012. A UCP Executive Committee was established to oversee the COUCP. Colorado's DOT recipients agreed that the UCP will take the form of Interagency Recognition - a form of reciprocity. In Colorado, the two agencies authorized to certify DBEs are the CDOT Office of Certification and the City/County of Denver's Division of Small Business Opportunity (DSBO). New applicants are added to the directory as

they are certified by CDOT and DSBO. The directory is updated nightly to ensure on-time information is displayed. MMT will direct all inquiries to the UCP that is established.

### **Section 26.83 Procedures for Certification Decisions**

#### Re-certifications 26.83(a) & (c)

MMT will rely on the recertification procedures outlined in 49 CFR Part 26.83 (a) and (c) for the removal of DBE's eligibility as described in the CDOT Program Manual available in <https://www.codot.gov/business/civilrights/smallbusiness/dbe/dbe-program-manual> which will review the eligibility of DBEs that were certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. These reviews will be completed no later than three years from the most recent certification date of each firm.

#### "No Change" Affidavits and Notices of Change: 26.83(j)

MMT will rely on the No Change Affidavits and Notice of Change procedures outlined in 49 CFR Part 26.830 for notification of any change in circumstances as described and in accordance with the COOT Program Manual.

### **Section 26.85 Denials of Initial Requests for Certification**

MMT will rely on the Denial of Initial Request for Certification procedures outline in 49 CFR Part 26.85 for denial of initial request as described in the CDOT Program Manual.

### **Section 26.87 Removal of a DBE's Eligibility**

MMT will rely on the Removal of DBE's Eligibility procedures as outlined in 49 CFR Part 26.87 for removal of DBE's eligibility in accordance with the CDOT Program Manual available in <https://www.codot.gov/business/civilrights/smallbusiness/dbe/dbe-program-manual>

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals  
Branch 1200 New Jersey Ave. SE

West Building, 7<sup>th</sup> Floor  
Washington, D.C. 20590

MMT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

MMT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, any local law.

Notwithstanding any contrary provisions of state or local law, MMT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

#### **Monitoring Payments to DBEs**

MMT will require prime contractors to maintain records and documents of payments to DBEs for seven (7) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MMT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

MMT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

## **ATTACHMENTS**

Attachment 1: Organizational Chart

Attachment 2: DBE Directory

Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies

Attachment 4: Goal Setting Methodology

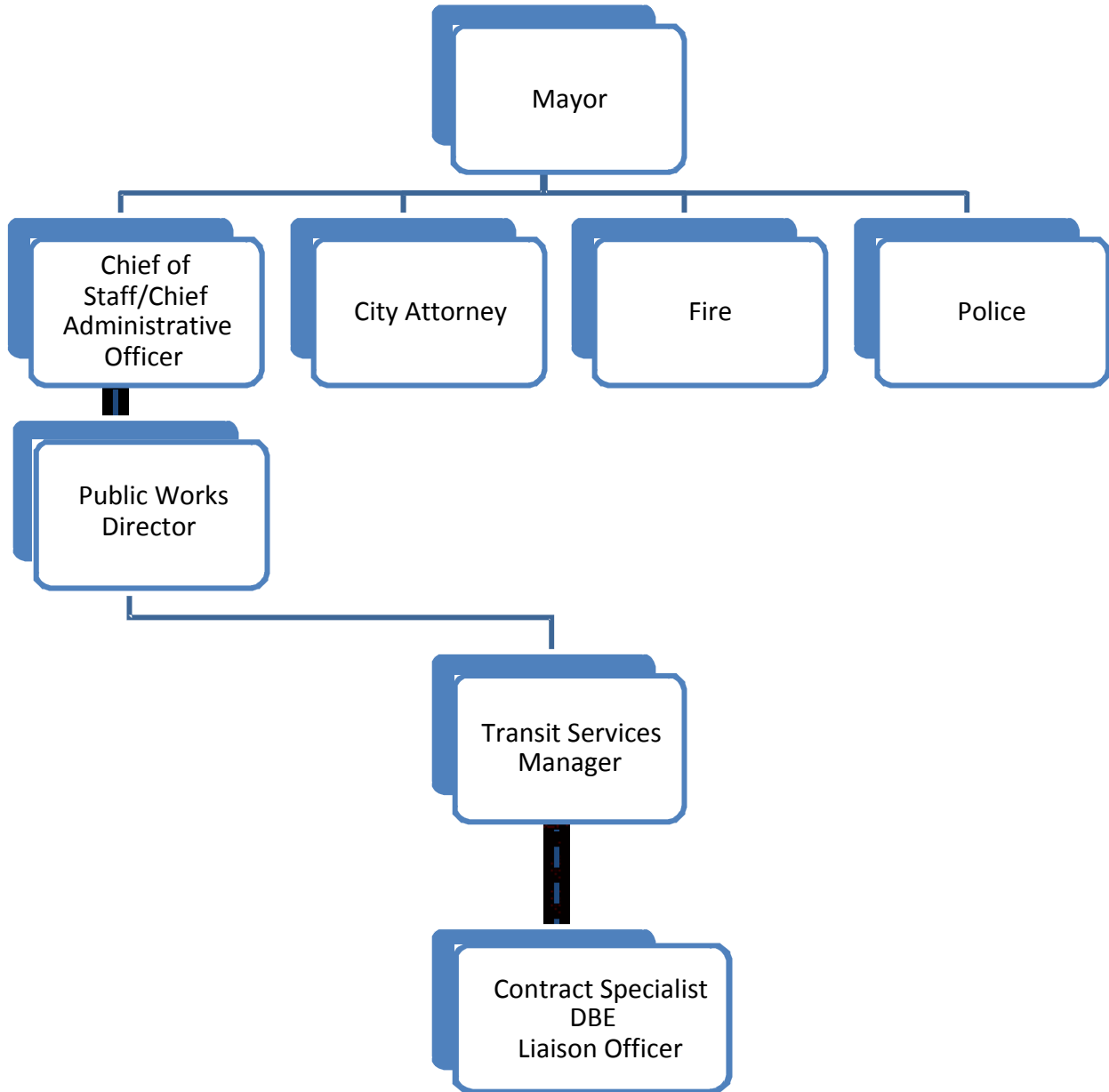
Attachment 5: Good Faith Efforts Forms

Attachment 6: Certification Forms

Attachment 7: DBE Regulations: 49 CFR Part 26 Electronic Code of Federal Regulation

# ATTACHMENT 1

## Organizational Chart



## **ATTACHMENT 2**

### **DBE Directory**

Contact: Denver Economic Development & Opportunity  
101 W Colfax Ave.  
Denver, CO 80202  
Phone: 720-913-1999

Unified Certification Program List of DBE firms

DBE Directory may be viewed at website

<https://www.codot.gov/business/civilrights/smallbusiness/dbe>

### **ATTACHMENT 3**

#### **Monitoring and Enforcement Mechanisms/Legal Remedies**

MMT has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Colorado Revised Statutes, Title 4;

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001



## **ATTACHMENT 4**

### **Section 26.45: Overall Goal Calculation**

#### **Amount of Goal**

MMT's overall goal for 2021-2023, is the following: 6% of the Federal financial assistance will be expended in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

#### **Methodology used to Calculate Overall Goal**

##### **Step 1: 26.45(c)**

Determine the base figure for the relative availability of DBEs.

To establish a base figure for the relative availability of DBEs to all comparable firms (DBEs and non-DBEs) available to participate in MMT's FTA-assisted contracting opportunities, MMT completed an analysis of the subcontractable elements in each anticipated project/contract. The elements are identified by the North American Industry Classification System (NAICS) code associated with that discipline of work, as reflected in Table 4.

The data sources used to derive the relative availability of DBEs in MMT's market area are the U.S. Census Bureau County Business Patterns<sup>1</sup> (CPB) database and the State of Colorado Unified Certification Program (UCP) DBE Directory. Additionally, for the analysis, MMT identified twelve counties within its market area, consisting of Adams, Arapahoe, Custer, Denver, Douglas, El Paso, Elbert, Fremont, Jefferson, Lincoln, Pueblo, and Teller.

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<sup>1</sup>Published in April 2017 using 2015 data. The Census Bureau County Business Patterns data is published on an annual schedule.

Table 4  
Relative Availability of DBEs

	NAICS Codes / Descriptions	Number of Firms		DBE	
		DBE	Total	Availability	
<b>Construction</b>	236220	Commercial & Institutional Building Construction	48	513	9.36%
	237310	Highway, Street & Bridge Construction	58	114	50.88%
	237990	Other Heavy & Civil Construction	24	30	80.00%
	238110	Foundation, Structure, Building Exterior	34	273	12.45%
	238130	Framing Contractors	16	241	6.64%
	238160	Roofing Contractors	14	463	3.02%
	238210	Electrical Contractors	29	1,027	2.82%
	238220	Plumbing, Heating & Air Conditioning	15	1,227	1.22%
	238310	Drywall Installation	31	300	10.33%
	238320	Painting, Wall Covering Contractors	42	528	7.95%
	238910	Site Preparation Contractors	68	360	18.89%
	238990	All Other Specialty Trade Contractors	49	445	11.01%
	561730	Landscaping Contractors	32	1,047	3.06%
	561990	Flagging	34	174	19.54%
	327320	Read-Mix Concrete	0	29	0.00%
	423320	Asphalt & Concrete Mixture Merchants	1	48	2.08%
	424910	Mulch Merchant Wholesalers	1	29	3.45%
	<b>Subtotal</b>	<b>496</b>	<b>6,848</b>	<b>7.24%</b>	
<b>Consulting Services</b>	541310	Architect Services	33	376	8.78%
	541320	Landscape Architectural Services	63	130	48.46%
	541330	Engineering Services	28	1,510	1.85%
	541360	Geophysical Surveying & Mapping	0	46	0.00%
	541370	Surveying & Mapping	7	117	5.98%
	541611	Administration, Management, Strategic Planning	39	1,609	2.42%
	541614	Transportation Management	19	128	14.84%
	541620	Environmental Consulting	66	246	26.83%
	541690	Other Scientific & Technical Consulting Services	10	463	2.16%
	541910	Market Research, Public Opinion Polling	63	74	85.14%
	<b>Subtotal</b>	<b>328</b>	<b>4,699</b>	<b>6.98%</b>	
<b>Operations</b>	485991	Special Needs Passenger Transit	0	27	0.00%
	561720	Janitorial Services	31	822	3.77%
	561422	Telephone Call Centers	0	91	0.00%
		<b>Subtotal</b>	<b>31</b>	<b>940</b>	<b>3.30%</b>
	<b>TOTALS</b>	<b>855</b>	<b>12,487</b>	<b>6.85%</b>	

The base figure expresses the availability of DBEs as a percentage of all firms for each NAICS code for which there will be contracting and subcontracting opportunities. As indicated below, the base figure is derived by dividing the total number of DBEs by the total number of All Firms.

$$\text{Base Figure} = \frac{855 \text{ (Total DBEs)}}{12,487 \text{ (Total All Firms)}} = 6.85\%$$

*Step 1 Base Figure Weighting* – Weighting can help ensure that the Step 1 Base Figure is as accurate as possible. Table 5 illustrates the DBE percentage weighting calculation.

**WEIGHTING FORMULA CALCULATIONS**

	% of Federal Funding (V)	Construction Services (Total All NAICS Codes)	% of Federal Funding (W)	Consulting Services (Total All NAICS Codes)	% of Federal Funding (X)	Operations (Total All NAICS Codes)	TOTAL
<b>DBEs</b>	65.80%	496 (A)	0.65%	328 (C)	22.88%	31 (E)	<b>855</b>
<b>All Firms</b>		6,848 (B)		4,699 (D)		940 (F)	<b>12,487</b>
	V(A/B)	4.77%	W(C/D)	0.05%	X(E/F)	0.75%	<b>5.57%</b>

=	V (A/B)	+	W (C/D)	+	X (E/F)
=	65.80%	496	+	0.65%	328
		6848			4699
					940

- (A) Total Number of DBEs in Construction Services NAICS Codes
- (C) Total number of DBEs in Consulting Services NAICS Codes
- (E) Total number of DBEs in Operation Service NAICS Codes
  
- (B) Total Number of All Firms in Construction Services NAICS Codes
- (D) Total Number of all Firms in Consultant Services NAICS Codes
- (F) Total Number of All Firms in Operations Services NAICS Codes
  
- (V) The percent of total federal funding in Construction Services NAICS Codes
- (W) The percent of total federal funding in Consulting Services NAICS Codes
- (X) The percent of total federal funding in Operations Services NAICS Codes

**Step 2: 26.45(d)**

Once the DBE base figure has been calculated, regulations 49 CFR Part 26.45(d) requires that “all of the evidence available” in your jurisdiction must be examined to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal.

The regulations further state that there are several types of evidence that must be considered when adjusting the base figure, such as: 49 CFR Part 26.45(d)(1)(i), “The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.”

Since the anticipated contracting opportunities for FFYs 2021 – 2023 are similar to past years; MMT analyzed its past participation to determine the feasibility of an adjustment to the base figure.

Table 6 reflects DBE achievement for the previous three federal fiscal years.

Table 6

Federal Fiscal Year	DBE Goal	Total Contract Dollars Awarded	Total DBE Dollars Awarded	DBE Achievement
2018	6%	\$ 3,019,382.00	\$ 523,169.00	25%
2019	6%	\$ 4,114,791.00	\$ 107,573.00	8%
2020*	6%	\$ 603,597.45	\$ 15,280.00	3%

- For the federal fiscal year six month reporting period October 1, 2019 – March 31, 2020

MMT had determined the median past participation of 5.82% to be the most relevant adjustment factor to consider for FFY 2018-2020. When applying the federal-prescribed formula (i.e., the average of the step one base figure (5.57%), and the median past participation (5.82%) the resulting adjusted base figure was 5.695%, see Table 7.

Step One Base Figure	Median Past Participation FY 2018 - 2020	Divided By	Adjusted Goal
5.57%	5.82%	2	5.695%
11.39			

After an updated analysis of relative availability of DBE’s, MMT has determined that the contracting and subcontracting opportunities are similar to past years. Accordingly, MMT’s final proposed overall DBE goal for FFY 2021 – 2023 FTA-assisted contracts, is rounded and set at 6%.

**Public Participation**

MMT published our goal information in these publications: Bidnet and the City website [www.coloradosprings.gov](http://www.coloradosprings.gov)

MMT received comments from these individuals or organizations: No comments were received.

Summaries of these comments are as follows: N/A

Our responses to these comments are: N/A

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

MMT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. MMT uses the following race-neutral means to increase DBE participation:

- Making RFPs and IFBs attractive to DBEs
- Send out solicitation notices to certified DBEs and other small businesses so they are aware of contracting and subcontracting opportunities
- Ensuring that contractors, vendors and small businesses are informed of MMT's DBE Program and its requirements
- Advertise and promote the Colorado Unified Certification Program (CUCP) DBE directory to prime contractors at pre-bid meetings
- Encourage minority and women small businesses to apply for DBE certification
- Partnering with minority and women Chamber of Commerce business and contractor associations to network with new vendors and promote doing business with the City of Colorado and MMT.
- Conduct workshops and provide vendors with one-on-one meetings for direct marketing of products and services
- Attend workshops to network with other DBE Liaison Officers
- Conduct workshops in conjunction with CDOT certifying agency at the local Small Business Development Workshop
- Conduct open house meetings to advertise contracting and sub-contracting opportunities to both primes and subs to allow networking prior to project advertisement
- In addition to vendor/contractor registration information and solicitation information, enhance MMT's website with resources for vendors, contractors, DBEs and other small businesses

MMT estimates that, in meeting our overall goal of 6%, MMT will obtain 6% from race-neutral participation.

The following is a summary of the basis of our estimated breakout of race-neutral and race conscious DBE participation: MMT will analyze, on an annual basis, the DBE awards and commitments reported to the FTA on a semi-annual basis. MMT intends to meet its overall goal through the use of race-neutral means of facilitating DBE participation. If the DBE awards and commitments are less than the overall race-neutral DBE goal, MMT will develop and submit a written analysis of the shortfall, as well as the corrective actions to be implemented to remedy the shortfall. The corrective actions may also include establishing contract goals to meet any portion of the overall goal MMT projects not being able to meet using race-neutral means.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if MMT uses contract goals MMT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and will track and report race-neutral and race conscious participation separately.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

MMT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

**ATTACHMENT 5**

**Forms 1 & 2 for Demonstration of Good Faith Efforts**

**Enclosure 1A - DBE AFFIDAVIT**

THIS PAGE MUST BE COMPLETED BY ALL PRIME PROPOSERS/BIDDERS TO ACCEPT THE ESTABLISHED GOAL AND TO INDICATE THE PERCENTAGE OF DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.

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The undersigned bidder/proposer hereby agrees that the goal established for DBE participation in this project through subcontracting, obtaining materials from materials suppliers, or entering into a joint venture with Disadvantaged Business Enterprise(s) in conformity with the Requirements, Terms, and Conditions of this Attachment is:

**\_\_\_% - DBE (Disadvantaged Business Enterprise)**

THIS PERCENTAGE RELATES TO DBE SUBCONTRACTING (**MATERIAL SUPPLIERS ARE CREDITED FOR 60% OF THEIR CONTRACT VALUE**) (UNLESS THE PRIME IS A CERTIFIED DBE) AND IS CONSISTENT WITH THE DISADVANTAGED BUSINESS ENTERPRISE STATEMENT LISTED IN THE BID/PROPOSAL FORM.

IT IS THE BIDDER'S/PROPOSER'S INTENT TO COMPLY WITH THE ABOVE GOAL.

THE BIDDER/PROPOSER IS COMMITTED TO MINIMUM OF \_\_\_\_\_ % UTILIZATION ON THIS CONTRACT, IF AWARDED, FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION AND WILL SUBMIT REQUIRED DOCUMENTATION.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF

\_\_\_\_\_ TO MAKE THIS AFFIDAVIT  
(Name of Business Entity)

\_\_\_\_\_  
(Date) (Affiant) (Title)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the

undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained. In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_

(Notary Public)

(SEAL)

**Enclosure 1B - DBE AFFIDAVIT**

THIS PAGE MUST BE COMPLETED BY DISADVANTAGED BUSINESS ENTERPRISE CONTRACTOR (PROPOSER/BIDDER)

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I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_

and duly authorized representative of (the firm of) \_\_\_\_\_

whose address is

\_\_\_\_\_

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I hereby declare and affirm that I am a Disadvantaged Business Enterprise (DBE) and am certified as of the date that the City receives this bid/proposal and as defined by the City of Colorado Springs Purchasing Department in Attachment A for

\_\_\_\_\_ and that I will provide information and/or the (Contract number and name)

certification to document this fact.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Affiant)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

(SEAL)





## **ATTACHMENT 6**

### **Certification Forms**

MMT does not conduct any certifications, however, they will distribute the same forms as the Unified Certifications Program (UCP) to any interested firms who wish to be certified as a DBE.

Forms can be found at the following website:

<http://www.coloradodot.info/business/equal-opportunity/dbe/certification.html>

## **ATTACHMENT 7**

MMT will follow the up-to-date 49 CFR Part 26 electronic code of federal regulation found at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl).