



Disadvantaged Business Enterprise Plan 2024

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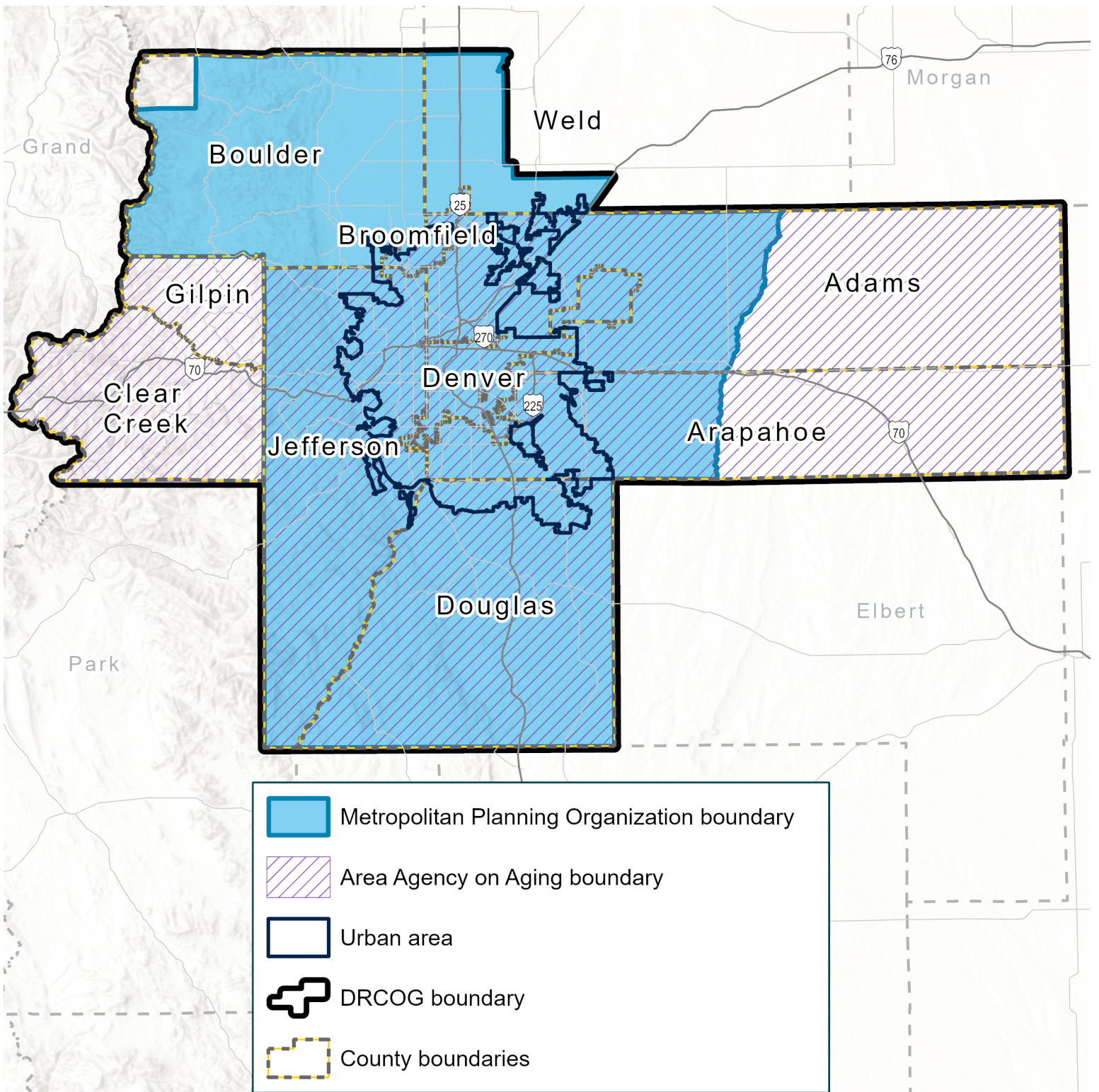
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Introduction

Map 1.1: The Denver Regional Council of Governments planning area



Agency background

The Denver Regional Council of Governments is a regional planning organization and council of governments. Representatives of the region's counties, cities and towns work together to make life better for their communities. The Denver Regional Council of Governments is guided by the Metro Vision plan, which defines goals and actions needed to ensure the region maintains and improves quality of life in the region.

- The Denver Regional Council of Governments is a council of governments, serving as a planning organization, technical assistance provider and forum for local member governments.
- The Denver Regional Council of Governments functions as a regional planning commission per Colorado state statute and prepares the plan for the physical development of the region, known as Metro Vision.
- The Denver Regional Council of Governments is the federally designated Area Agency on Aging, providing comprehensive services to address the needs of the region's older adults and people living with disabilities.
- The Denver Regional Council of Governments is a designated recipient of Federal Transit Administration Section 5310 program funds for the Denver-Aurora Urbanized Area.

- The Denver Regional Council of Governments is the author of the region's Comprehensive Economic Development Strategy which allows access to special funding programs at the federal Economic Development Administration to fund projects that address the foundational needs of successful economic development efforts in the region.

The Denver Regional Council of Governments planning area covers Adams, Arapahoe, Boulder, Clear Creek, Douglas, Gilpin and Jefferson counties, the City and County of Broomfield and the City and County of Denver, and southwest Weld County.

The Area Agency on Aging administers Older Americans Act and Older Coloradans Act funds for projects in an eight-county portion of the region including Adams, Arapahoe, Clear Creek, Denver, Douglas, Gilpin, and Jefferson counties, as well as the City and County of Broomfield and the City and County of Denver.

As required by the Older Americans Act, the Area Agency on Aging carries out the Denver region's Area Plan on Aging by directly providing programs and through contracts with community-based agencies to provide a continuum of services.

The Area Agency on Aging helps adults with disabilities remain independent in their communities. Through directly providing services and funding a network of providers, it offers information and referral services, case management, transportation, home-delivered meals, senior centers, and legal services.

Mission statement

The Denver Regional Council of Governments is a planning organization where local governments collaborate to establish guidelines, set policy, and allocate funding in the areas of transportation and personal mobility, growth and development, and aging and disability resources.

Governance

The governing body for the Denver Regional Council of Governments is its Board of Directors, made up of elected officials representing each member government. It also includes at least one non-voting member each from the Colorado Department of Transportation (appointed by the governor) and from the Regional Transportation District. The agency's Board is the policy body for the metropolitan planning organization.

The Denver Regional Council of Governments is a federally mandated and federally funded transportation policymaking organization made up of representatives from local government and governmental transportation authorities. Two committees assist the Denver Regional Council of Governments in its metropolitan planning organization duties:

- **Regional Transportation Committee:** A permanent committee that prepares and forwards policy recommendations to the agency Board. Agency Board policy actions that differ from the recommendation must be referred to the committee for reconsideration.
- **Transportation Advisory Committee:** A permanent committee that assists the Regional Transportation Committee and the Board by reviewing the work of staff engaged in transportation planning.

Federal funding

The Denver Regional Council of Governments receives direct funding from the Federal Transit Administration Section 5310 program and its staff anticipate issuing contracts to recipients and subrecipients greater (in total) than \$250,000. Therefore, the Denver Regional Council of Governments is required to create, maintain, and implement a Disadvantaged Business Enterprise plan. Table 1 shows Section 5310 funding available to the Denver Regional Council of Governments:

Table 1: Section 5310: Enhanced mobility of seniors and individuals with disabilities

Fiscal year	Federal funding	Administration	Amount available for contracting	Status
2021	\$1,939,052	\$193,905	\$350,000	Completed
2022	\$2,808,695	\$280,869	\$450,000	Completed
2023	\$2,929,143	\$292,914	\$190,000	In-Progress
2024	\$2,964,576	\$250,000	\$200,000	Pending

Section 5310 program management is provided by staff from the Administration and Finance division with input from agency staff in the Area Agency on Aging and Transportation and Planning Operations divisions. Administration and Finance staff also provide financial oversight and contract management.

Denver Regional Council of Governments staff will never exclude any person from participating in, deny any person the benefits of, or otherwise discriminate against any person in connection with the award and performance of any contract based on race, color, sex, or national origin. Using the framework and requirements in this Disadvantaged Business Enterprise Program Plan document, Denver Regional Council of Governments staff will ensure that Disadvantaged Business Enterprises have equal opportunity for all contracting and subcontracting opportunities.

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Disadvantaged Business Enterprise Program Plan

SubpartA: General requirements

26.1 Objectives

The Denver Regional Council of Governments has established a Disadvantaged Business Enterprise program in accordance with regulations of the U.S. Department of Transportation, 49 C.F.R. Part 26. The Denver Regional Council of Governments has received federal financial assistance from the Federal Transit Administration and, as a condition of receiving such assistance, Denver Regional Council of Governments staff have signed an assurance that it will comply with 49 C.F.R. Part 26. This requirement was reinstated by Congress in the Infrastructure Investment and Jobs Act, Public Law 117-58.

26.3 Applicability

The Denver Regional Council of Governments is the recipient of federal transit funds authorized by Titles I, III, V and VI of Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240 or by federal transit laws in Title 49, U.S. Code, or Titles I, III and V of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178. Titles I, III and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.

26.5 Definitions

The terms used in this Disadvantaged Business Enterprise Program document adhere to the terms defined in 49 C.F.R. Part 26.5.

26.7 Nondiscrimination requirements

Denver Regional Council of Governments staff 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 C.F.R. Part 26 based on race, color, sex or national origin.

In administering its Disadvantaged Business Enterprise Program, Denver Regional Council of Governments staff 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 Disadvantaged Business Enterprise Program with respect to individuals of a particular race, color, sex or national origin.

In addition to nondiscrimination requirements set forth by the Federal Transit Administration, the Denver Regional Council of Governments has an agency-specific discrimination statement, found in the Title VI Implementation Plan.

26.11 Record-keeping requirements

Reporting to the Federal Transit Administration: 26.11(b)

Denver Regional Council of Governments staff will report Disadvantaged Business Enterprise participation on a semiannual basis (June 1 and December 1), using the Uniform Report of Disadvantaged Business Enterprise Awards of Commitments and Payment Form found in Appendix 6. The reports reflect the federal share of payments to Disadvantaged Business Enterprises on Federal Transit Administration-assisted contracts.

Bidders List: 26.11(c)

Denver Regional Council of Governments staff will create a bidders list, consisting of information about all Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise firms that bid or quote on U.S. Department of Transportation-assisted contracts. This requirement will allow staff to use the bidders list approach to calculate overall goals. The bidder list will include each firm's name, address (including zip code), Disadvantaged Business Enterprise or non-Disadvantaged Business Enterprise status, race and gender information for the firm's majority owner, applicable North American Industry Classification System code, age, and annual gross receipts. Denver Regional Council of Governments staff will collect this information by requiring, at minimum, prime bidders to report the names, addresses, and Disadvantaged Business Enterprise status of all subcontracted firms.

Reporting: 26.11(e)

By January 1 of each year, the Colorado Department of Transportation will report to the U.S. Department of Transportation Office of Civil Rights the following information:

- 1) The number and percentage of in-state and out-of-state Disadvantaged Business Enterprise certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
- 2) The number of Disadvantaged Business Enterprise certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
- 3) The number of decertified firms:
 - i) Total in-state and out-of-state firms decertified;
 - ii) Names of in-state and out-of-state firms decertified because socially and economically disadvantaged individual exceeded the personal net worth cap;
 - iii) Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- 4) The number of in-state and out-of-state firms summarily suspended;

- 5) The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantage status;
- 6) The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status.

26.13 Federal financial assistance agreement

Officials representing the Denver Regional Council of Governments have signed the following assurances, applicable to all Federal Transit Administration contracts and their administration. When the agency has subrecipients, this language will appear in financial assistance agreements with subrecipients and will require their signatures.

Assurance: 49 C.F.R. 26.13(a)

Officials representing the Denver Regional Council of Governments have signed the following assurance with the Federal Transit Administration:

DRCOG shall not discriminate based on race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its Disadvantaged Business Enterprise Program or the requirements of 49 C.F.R. Part 26. The recipient shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The

recipient's Disadvantaged Business Enterprise Program, as required by 49 C.F.R. 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 DRCOG 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.).

Subpart B: Administrative requirements

Contract Assurance: 49 C.F.R. 26.13(b)

The Denver Regional Council of Governments staff will ensure that the following clause is placed in every Federal Transit Administration contract and subcontract:

The contractor, subrecipient, or subcontractor shall not discriminate based on race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. Department of Transportation-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:

- 1) *Withholding monthly progress payments.*
- 2) *Assessing sanctions.*
- 3) *Liquidated damages.*
- 4) *Disqualifying the contractor from future bidding.*

26.21 Disadvantaged Business Enterprise Program updates

Since the Denver Regional Council of Governments has received a grant of \$250,000 or more in Federal Transit Administration planning capital and operating assistance in a federal fiscal year, the Denver Regional Council of Governments staff will continue to carry out the Disadvantaged Business Enterprise Program until all funds from the Federal Transit Administration financial assistance have been expended. The Denver Regional Council of Governments staff will provide the Federal Transit Administration updates representing significant changes in the program.

If the Denver Regional Council of Governments does not meet the \$250,000 federal fiscal assistance threshold, its staff will continue maintaining and updating this Disadvantaged Business Enterprise Program Plan in accordance with existing Federal Transit Administration requirements.

26.23 Policy statement

It is the policy of the Denver Regional Council of Governments to ensure that Disadvantaged Business Enterprises, as defined in Part 26, have an equal opportunity to receive and participate in Federal Transit Administration-assisted contracts. The detailed policy statement is included in Appendix 1 of this document.

26.25 Disadvantaged Business Enterprise Liaison Officer

The Denver Regional Council of Governments has designated the following individual as its Disadvantaged Business Enterprise Liaison Officer:

Name: Roberta Cole, Program Manager,
Contracts and Budget

Address: Denver Regional Council
of Governments
1001 17th Street, Suite 700
Denver, CO 80202

Phone: 303-480-5620

Email: rcole@drcog.org

The Disadvantaged Business Enterprise Liaison Officer, in conjunction with other agency division staff, are responsible for implementing all aspects of the Disadvantaged Business Enterprise Program and ensuring that the agency complies with all provisions of 49 C.F.R. Part 26. The Disadvantaged Business Enterprise Liaison Officer has direct, independent access to both the agency Administration and Finance Director and the Executive Director concerning Disadvantaged Business Enterprise Program matters. An organization chart displaying the Disadvantaged Business Enterprise Liaison Officer's position in the organization is found in Appendix 2 of this document.

The Disadvantaged Business Enterprise Liaison Officer, in conjunction with other agency division staff, is responsible for developing, implementing, and monitoring the program, in coordination with other appropriate officials. The Disadvantaged Business Enterprise Liaison Officer has two direct staff members to assist in the administration of the program. The duties and responsibilities include the following:

- 1) Gathers and reports statistical data and other information as required by the U.S. Department of Transportation.
- 2) Reviews third-party contracts and purchase requisitions for compliance with this program.
- 3) Works with all departments to set overall annual goals.
- 4) Ensures that bid notices and requests for proposals are available to Disadvantaged Business Enterprises in a timely manner.
- 5) Identifies contracts and procurements so that Disadvantaged Business Enterprise Program goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
- 6) Analyzes the Denver Regional Council of Government's progress toward attainment and identifies ways to improve progress.

- 7) Participates in pre-bid meetings.
- 8) Advises the governing body on Disadvantaged Business Enterprise Program matters and achievement.
- 9) Provides Disadvantaged Business Enterprises with information and assistance in preparing bids, obtaining bonding and insurance.
- 10) Plans and participates in Disadvantaged Business Enterprise training seminars.
- 11) Certifies Disadvantaged Business Enterprises according to the criteria set by the Department of Transportation and acts as liaison to the Uniform Certification Process in the State of Colorado.
- 12) Provides outreach to Disadvantaged Business Enterprises and community organizations to advise them of opportunities.

26.27 Disadvantaged Business Enterprise financial institutions

The Denver Regional Council of Governments has reviewed Colorado Department of Transportation Disadvantaged Business Enterprise Directory and has determined there are no listings for financial institutions owned and controlled by socially and economically disadvantaged individuals. The Denver Regional Council of Governments will reevaluate every three years whether Disadvantaged Business Enterprise financial institutions are available.

26.29 Prompt payment mechanisms

Prompt payment: 26.29(a)

The Denver Regional Council of Governments will include the following clause in each Federal Transit Administration-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the Denver Regional Council of Governments. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the Denver Regional Council of Governments. This clause applies to both Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise subcontracts.

Retainage: 26.29(b)

The Denver Regional Council of Governments does not collect retainage on eligible contracts that apply to both Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise firms.

Monitoring and oversight: 26.29(d)

The Denver Regional Council of Governments tracks the spending of subrecipient funds by entering a contract purchase order in the agency's existing accounting system. As subrecipient funds are requested, the payment to the subrecipient is applied against the purchase order. The agency also monitors subrecipient performance through on-site visits and invoice reviews. The Denver Regional Council of Governments does not issue retainers.

If the Denver Regional Council of Governments staff notes that the prime contractor is not in compliance with the prompt payment provision, it will send a notification letter giving them 15 days to comply and submit proof of compliance. Appendix 3 lists the contract remedies available to Denver Regional Council of Governments staff in the event of noncompliance.

26.31 Directory

The Denver Regional Council of Governments uses the Colorado Department of Transportation Disadvantaged Business Enterprise Directory. The directory lists certified Disadvantaged Business Enterprise and Airport Concessions Disadvantaged Business Enterprise businesses that may be used by primes, contractors, or consultants to meet Disadvantaged Business Enterprise and Airport Concessions Disadvantaged Business Enterprise project goals. The directory is available online:

- [Colorado Disadvantaged Business Enterprise and Airport Concessions Disadvantaged Business Enterprise Directory](#)
- [Colorado Emerging Small Business Directory](#)

The listing for each firm includes the firm's name, address, phone number, fax number, email and contact person and lists the types of work for which a firm is eligible as a Disadvantaged Business Enterprise according to North American Industry Classification System code. Complete work codes consist of a six-digit industry sector code and text description.

26.33 Overconcentration

Denver Regional Council of Governments staff have not identified any areas of overconcentration. The agency will continue to monitor Disadvantaged Business Enterprise participation and usage and will use appropriate measures to assist Disadvantaged Business Enterprises if any overconcentration areas are identified.

26.37 Monitoring and enforcement mechanisms

The Denver Regional Council of Governments will take the following monitoring and enforcement mechanisms to ensure compliance with 49 C.F.R. Part 26:

- 1) The Denver Regional Council of Governments staff will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so the U.S. Department of Transportation can take the steps (for example, referral to the U.S. Department of Justice for criminal prosecution, referral to the U.S. Department of Transportation Inspector General, action under suspension and debarment or the Program Fraud and Civil Remedies Act of 1986 rules) provided in 26.109.
- 2) The Denver Regional Council of Governments staff will consider similar action under the agency's own legal authorities, including responsibility determinations in future contracts. Appendix 3 lists the regulation, provisions, and contract remedies available to the agency in the events of noncompliance by a participant in the agency's procurement activities.
- 3) The Denver Regional Council of Governments staff will continue to use existing monitoring and enforcement mechanisms to verify that work committed to Disadvantaged Business Enterprises at contract award is performed by the Disadvantaged Business Enterprises.
- 4) The Denver Regional Council of Governments staff will keep a running tally of actual payments to Disadvantaged Business Enterprise firms for work committed to them at the time of the contract award.

Subpart C: Goals, good faith efforts and counting

26.43 Set-asides or quotas

The Denver Regional Council of Governments does not use quotas in any way in the administration of this Disadvantaged Business Enterprise Program.

26.45 Overall goals

In accordance with Section 26.45(f), Denver Regional Council of Governments staff will submit its overall triennial Disadvantaged Business Enterprise goal to the Federal Transit Administration on or before October 1. Before establishing the overall goal each year, agency staff will collaborate with the Colorado Department of Transportation to identify and consult with relevant minority, women and general contractor groups, community organizations and other pertinent officials or organizations to obtain information concerning the availability of Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise firms, the effects of discrimination on opportunities for Disadvantaged Business Enterprises, and the agency's efforts to establish equitable opportunities for the participation of Disadvantaged Business Enterprises.

The process used by the Denver Regional Council of Governments staff to establish overall Disadvantaged Business Enterprise Program goals conforms with Section 26.45 of 49 C.F.R. and is based on the demonstrable evidence of Disadvantaged Business Enterprise firms ready, able, and willing to participate and perform contracting

opportunities derived from the agency's Federal Transit Administration-assisted projects or contracts. The goal reflects the level of Disadvantaged Business Enterprise participation anticipated by agency staff as described in Appendix 4, absent the effects of discrimination. Through this process, **the Denver Regional Council of Governments has established an overall goal of 1.8% for Disadvantaged Business Enterprise participation in Federal Transit Administration-assisted contracts during federal fiscal years 2024-2026.** A description of the methodology agency staff used to calculate the overall goal and the goal calculations can be found in Appendix 4 to this document.

Prior to establishing this goal, Denver Regional Council of Governments staff will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the agency's office for 30 days following the date of the notice, and informing the public that the agency will accept comments on the goals for 45 days from the date of the notice.

Normally, the Denver Regional Council of Governments will issue this notice in conjunction with the Title VI Implementation Plan recurring update process no later than July 1 of each year. The notice will include the address to which comments may be sent and addresses (including physical locations and websites) where the proposal may be reviewed.

The agency's submission to the Federal Transit Administration will include the goal, including an estimate of race-neutral and race-conscious participation, as appropriate; a copy of the methodology used to develop the goal; a summary of information and comments received during the public participation process and agency's responses; and proof of publication.

Denver Regional Council of Governments staff will begin using the overall goal on October 1 of each year unless the agency receives other instructions from the Federal Transit Administration. If agency staff establish a goal on a project basis, it will begin using its goal by the time of the first solicitation for a Federal Transit Administration-assisted contract for the project.

26.47 Goal setting and accountability

If the awards and commitments shown on the Denver Regional Council of Governments Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, agency staff will:

- 1) Analyze in detail the reason for the difference between the overall goal and the actual awards and commitments.
- 2) Establish specific steps and milestones to correct the problems identified in the analysis and to enable the agency to fully meet its goal for the new fiscal year.

- 3) Submit the plan to the Federal Transit Administration within 90 days of the end of the affected fiscal year, if requested.

26.49 Transit vehicle manufacturer goals

The Denver Regional Council of Governments will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on Federal Transit Administration-assisted transit vehicle procurements, to certify that it has complied with the requirements of this program. Alternatively, the agency may, at its discretion and with Federal Transit Administration approval, establish project-specific goals for Disadvantaged Business Enterprise participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program.

26.51 Meeting overall goals

Breakout of estimated race-neutral and race-conscious participation: 26.51(a-c)

The breakout of estimated race-neutral and race-conscious participation can be found in Appendix 5 of this document. The Denver Regional Council of Governments staff will update breakouts every three years when they update the goal calculation.

Contract Goals: 26.51(d-g)

Denver Regional Council of Governments staff will use contract goals to meet any portion of the overall goal that it 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 the overall goal that staff does not project will be met using race-neutral means.

Denver Regional Council of Governments staff will establish contract goals only on Federal Transit Administration-assisted contracts that have subcontracting possibilities. Agency staff 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 (for example, type and location of work, and availability of Disadvantaged Business Enterprises to perform the work).

Denver Regional Council of Governments staff will describe the contract goals as a percentage of the total amount of a Federal Transit Administration-assisted contract.

26.53 Good faith efforts procedures

Award of contracts with a Disadvantaged Business Enterprise: 26.53(a)

In instances in which a contract-specific Disadvantaged Business Enterprise goal is included in procurement or solicitation, the Denver Regional Council of Governments will not award the contract to a bidder that does not either:

- 1) Meet the contract goal with verified, countable Disadvantaged Business Enterprise participation.

- 2) Document that it has made adequate good faith efforts to meet the Disadvantaged Business Enterprise contract goal, even though it was unable to do so.

It is the obligation of the bidder to demonstrate that it has made sufficient good faith efforts prior to submission of its bid.

Information to be submitted: 26.53(b)

The Denver Regional Council of Governments treats bidder compliance with good faith effort requirements as a matter of responsiveness. Each solicitation for which a contract goal has been established will require each bidder to submit the following information:

- 1) Names and addresses of Disadvantaged Business Enterprise firms that will participate in the contract.
- 2) Description of the work that each Disadvantaged Business Enterprise will perform; to count toward meeting a goal, each Disadvantaged Business Enterprise firm must be certificated in a North American Industry Classification System code application to the kind of work the firm would perform on the contract.
- 3) Dollar amount of the participation of each Disadvantaged Business Enterprise firm participating.

- 4) Written and signed documentation of commitment to use a Disadvantaged Business Enterprise subcontractor whose participation it submits to meet a contract goal.
- 5) Written and signed confirmation from the Disadvantaged Business Enterprise that it is participating in the contract as provided in the prime contractor's commitment.
- 6) Evidence of good faith efforts if the contract goal is not met (refer to Appendix 6). The documentation of good faith efforts must include copies of each Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise subcontractor quote submitted to the bidder when a non-Disadvantaged Business Enterprise subcontractor was selected over a Disadvantaged Business Enterprise for work on the contract.

Demonstration of good faith efforts: 26.53(c)

It is the obligation of the bidder to make good faith efforts. A bidder 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 of Part 26.

The Disadvantaged Business Enterprise Liaison Officer and the project manager are responsible for determining whether a bidder who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The Disadvantaged Business Enterprise Liaison Officer will ensure that all information is complete and accurate and adequately documents the bidder or offer's good faith efforts before the Denver Regional Council of Governments commits to the performance of the contract by the bidder.

Administrative reconsideration: 26.35(d)

Within three working days of being informed by the Denver Regional Council of Governments that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration. A bidder must make this request in writing to the Denver Regional Council of Governments reconsideration official:

Name: Roberta Cole, Program Manager,
Contracts and Budget

Address: Denver Regional Council
of Governments
1001 17th Street, Suite 700
Denver, CO 80202

Phone: 303-480-5620

Email: rcole@drcog.org

The reconsideration official will not have played any role in the original determination that the bidder did not document sufficient good faith efforts. As part of reconsideration, the bidder will have the opportunity to provide written documentation regarding whether it met the

goal or made adequate good faith efforts to do so. The bidder will have the opportunity to meet in person with the reconsideration official to discuss whether it met the goal or made adequate good faith efforts to do. Denver Regional Council of Governments staff will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to meet contract goals. The result of the reconsideration process is not administratively appealable to Federal Transit Administration.

Good faith efforts when a Disadvantaged Business Enterprise is replaced on a contract: 26.53(f)

The Denver Regional Council of Governments requires that prime contractors not terminate a Disadvantaged Business Enterprise subcontractor listed on a bid or contract with a Disadvantaged Business Enterprise contract goal without its prior written consent. Prior written consent must be provided where there is “good cause” for termination of the Disadvantaged Business Enterprise firm, as established by Section 26.53(f)(3) of Part 26.

Before transmitting to the Denver Regional Council of Governments its request to terminate its contract, the prime contractor must give notice in writing to the Disadvantaged Business Enterprise of its intent to do so. A copy of this notice must be provided to the Denver Regional Council of Governments prior to consideration of the request to terminate. The Disadvantaged Business Enterprise will have five days to

respond and advise the agency why it objects to the proposed termination. The five-day period may be reduced if the matter is one of public necessity, for example, safety.

In instances in which “good cause” exists to terminate a Disadvantaged Business Enterprise’s contract, the Denver Regional Council of Governments will require a contractor to make good faith efforts to replace a Disadvantaged Business Enterprise that is terminated or has otherwise failed to complete its work on a contract with another certified Disadvantaged Business Enterprise to the extent needed to meet the contract goal. The Denver Regional Council of Governments will require the prime contractor to notify the Disadvantaged Business Enterprise Liaison Officer immediately of the Disadvantaged Business Enterprise’s inability or unwillingness to perform.

In this situation, the Denver Regional Council of Governments will require the prime contractor to obtain prior approval of the substitute Disadvantaged Business Enterprise and to provide copies of new or amended subcontracts or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the agency’s Director of Administration and Finance or designee will issue an order stopping all or part of payment or work until satisfactory action has been taken. If the contractor still fails to comply, the Director of Administration and Finance or designee may issue a termination for default proceeding.

26.55 Counting Disadvantaged Business Enterprise participation

The Denver Regional Council of Governments will count Disadvantaged Business Enterprise participation toward overall and contract goals as provided in 49 C.F.R. 26.55.

Subpart D: Certification standards

The Denver Regional Council of Governments relies upon the standards established under the Unified Certification Programs, which is administered by the Colorado Department of Transportation. The Unified Certification Program will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as Disadvantaged Business Enterprises in Federal Transit Administration-assisted contracts. To be certified as a Disadvantaged Business Enterprise, a firm must meet all certification eligibility standards.

The Unified Certification Program certification application forms and documentation requirements are found on the [Colorado Department of Transportation website](#). For information about the certification process or to learn how to apply for certification, firms can contact:

Name: Jenny Hunnings,
Director of Administration and Finance

Address: Denver Regional Council
of Governments
1001 17th Street, Suite 700
Denver, CO 80202

Phone: 303-480-6707

Email: jdock@drcog.org

Subpart E: Certification procedures

26.81 Unified Certification Programs

The Denver Regional Council of Governments is a member of a Unified Certification Program administered by the Colorado Department of Transportation. The Colorado Unified Certification Program Plan specifies that the Unified Certification Program will follow all certification procedures and standards of 49 C.F.R. Part 26 on the same basis as recipients; that the Unified Certification Program will cooperate fully with oversight, review, and monitoring activities of the Department of Transportation, and its operating administrations; and that the a Unified Certification Program will implement U.S. Department of Transportation directives and guidance concerning certification matters. The agreement also commits recipients to ensuring that the Unified Certification Program has sufficient resources and expertise to carry out the requirements of 49 C.F.R. Part 26.

The Unified Certification Program makes all certification decisions on behalf of all U.S. Department of Transportation recipients in Colorado with respect to participation in the U.S. Department of Transportation Disadvantaged Business Enterprise Program. Certification decisions by the Unified Certification Program are binding on all U.S. Department of Transportation recipients within the state. The Unified Certification Program serves as a single resource to applicants for certification, such that an applicant is required to apply only once for a Disadvantaged Business Enterprise certification that will

be honored by all recipients in the state. To apply for Disadvantaged Business Enterprise certification with the Unified Certification Program, a firm must be certified in its home state. For a Disadvantaged Business Enterprise to count, a certification decision by the Unified Certification Program must be made final prior to the due date for bids or offers on a contract on which a firm seeks to participate as a Disadvantaged Business Enterprise.

The Colorado Unified Certification Program Plan was submitted to the Federal Highway Administration and U.S. Department of Transportation and approved on April 5, 2004. The Colorado Unified Certification Program Plan was recently revised, and the most current revision of the plan can be found on the [Colorado Department of Transportation website](#).

26.83 Procedures for certification decisions

Recertification decisions: 26.83(a and c)

The recertification of firms as Disadvantaged Business Enterprises will be based on Unified Certification Program standards and will be conducted by the certifying agency, the Colorado Department of Transportation.

**“No change” affidavits and notice of change:
26.83(i-j)**

The Denver Regional Council of Governments will require all Disadvantaged Business Enterprises to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 C.F.R., Part 26 or of any material changes in the information provided.

The Denver Regional Council of Governments will also require all owners of all Disadvantaged Business Enterprises to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The affidavit should, at a minimum, include the following language:

I swear (or affirm) that there have been no changes in the circumstances of [name of Disadvantaged Business Enterprise firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 C.F.R., Part 26. There have been no material changes in the information provided with [name of Disadvantaged Business Enterprise firm]’s application for certification, except for any changes about which you have provided written notice to the Denver Regional Council of Governments under Section 26.83(j).

The Denver Regional Council of Governments requires Disadvantaged Business Enterprises to submit with the affidavit documentation of the Disadvantaged Business Enterprise firm’s size and gross receipts. The agency will notify all currently certified Disadvantaged Business Enterprise firms of these obligations in writing. This notification will inform Disadvantaged Business Enterprise firms that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth.

Likewise, if a firm’s owner knows or should know that he or she or the firm fails to meet a Part 26 eligibility requirements (for example, personal net worth), the obligation to submit a notice of change applies.

26.85 Interstate certification

Denials of initial requests for certification are reviewed and determined by the Unified Certification Program, administered by the Colorado Department of Transportation. The Denver Regional Council of Governments will direct all inquiries to the Unified Certification Program.

Subpart F: Compliance and enforcement

26.87 Decertification

The decertification of firms as Disadvantaged Business Enterprises will be based on Unified Certification Program standards, administered by the Colorado Department of Transportation. The Denver Regional Council of Governments will direct all inquiries to the Unified Certification Program.

26.89 Certification appeals

Any firm or complainant may appeal to the Colorado Department of Transportation decision in a certification matter to the Federal Transit Administration. 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, 7th Floor
Washington, DC 20590

The Unified Certification Program will promptly implement any U.S. Department of Transportation certification appeal decisions affecting the eligibility of Disadvantaged Business Enterprises for the Denver Regional Council of Governments U.S. Department of Transportation-assisted contracting.

26.109 Information, confidentiality, cooperation and intimidation or retaliation

Denver Regional Council of Governments staff will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law. In responding to requests for information concerning any aspect of the Disadvantaged Business Enterprise program, the agency complies with the provisions of the Federal Freedom of Information Act and Privacy Act (5 U.S.C. 552 and 552a).

In the event of a contractor's failure or refusal to comply with the terms of this program, the federal government has available several enforcement mechanisms that it may apply to firms participating in the Disadvantaged Business Enterprise Program, including, but not limited to, the following:

- 1) Suspension or debarment proceedings pursuant to 49 C.F.R. Part 26.
- 2) Enforcement action pursuant to 49 C.F.R. Part 31.
- 3) Prosecution pursuant to 18 U.S.C. 1001.



Appendix 1: Policy statement

It is the policy of the Denver Regional Council of Governments to ensure that Disadvantaged Business Enterprises are defined in Part 26, have an equal opportunity to receive and participate in Federal Transit Administration-assisted contracts.

It is also the Denver Regional Council of Government's policy:

- 1) To ensure nondiscrimination in the award and administration of Federal Transit Administration-assisted contracts.
- 2) To create equitable opportunities for which Disadvantaged Business Enterprises and small businesses can compete fairly for Federal Transit Administration-assisted contracts.
- 3) To ensure that the Disadvantaged Business Enterprise Program is narrowly tailored in accordance with applicable law.
- 4) To ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as Disadvantaged Business Enterprises.
- 5) To help remove barriers to the participation of Disadvantaged Business Enterprises and small businesses in Federal Transit Administration contracts.
- 6) To promote the use of Disadvantaged Business Enterprises in all types of federally assisted contracts and procurement activities.
- 7) To assist the development of firms that can compete successfully in the marketplace outside the Disadvantaged Business Enterprise Program.
- 8) To provide flexibility to recipients of federal financial assistance in establishing and providing opportunities for Disadvantaged Business Enterprises.

Roberta Cole, Program Manager, Contracts and Budget for the Denver Regional Council of Governments, has been delegated as the Disadvantaged Business Enterprise Liaison Officer. In that capacity, Roberta Cole, in addition to all other relevant agency staff, is responsible for implementing all aspects of the Disadvantaged Business Enterprise Program. Implementation of the Disadvantaged Business Enterprise Program is afforded the same priority as compliance with all other legal obligations incurred by the agency in its agreements with the Federal Transit Administration.

Executive Director

Date



Appendix 2: Organizational chart





Appendix 3: Monitoring and compliance

If the contractor violates or breaches terms of a relevant contract, the Denver Regional Council of Governments, at its discretion, may institute such administrative, contractual, or legal remedies available to the agency as may be appropriate. The Denver Regional Council of Governments may take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold payments pending correction of deficiency by the contractor.
- 2) Disallow all or part of the cost of the activity or action not in compliance.
- 3) Wholly or partly suspend or terminate the contract, including suspending the contract and services provided under the contract pending any audit or other investigation.
- 4) Withhold further contracts with contractor.
- 5) Take any other remedies that may be legally available.

In addition, the federal government has several enforcement mechanisms that it may apply to firms participating in the Disadvantaged

Business Enterprise problem, including, but not limited to:

- 1) Suspension or debarment proceedings pursuant to 49 C.F.R. Part 26.
- 2) Enforcement action pursuant to 49 C.F.R. Part 31.
- 3) Prosecution pursuant to 18 U.S.C. 1001.



Appendix 4: Overall goal calculation

Amount of goal

The Denver Regional Council of Governments overall goal for federal fiscal year 2024-2025 is the following: **1.8%** of the federal financial assistance from Section 5310 funding will be spent on Federal Transit Administration-assisted contracts. **\$200,000** is the dollar amount of Federal Transit Administration-assisted contracts that the agency expects to award during fiscal year 2024. Agency staff have set a goal of spending **\$3,600** with Disadvantaged Business Enterprises during this fiscal year.

Goal calculation

Step No. 1: Develop a base figure

The relative availability of Disadvantaged Business Enterprises is defined by the Federal Transit Administration as the total number of Disadvantaged Business Enterprise firms that are ready, willing, and able to perform the types of contracts the agency anticipates awarding. The Denver Regional Council of Governments used the approach suggested in 49 C.F.R. 26.45(c)(1) to compare the number of available Disadvantaged Business Enterprises to all firms in the industry.

In accordance with Federal Transit Administration guidelines, the Denver Regional Council of Governments used the first formula (refer to Table 2) to determine the relative availability of Disadvantaged Business Enterprise firms and subsequently the base figure for Disadvantaged Business Enterprise participation. The agency will utilize additional formulas in this process as the Disadvantaged Business Enterprise Program is updated in the future.

Table 2: Base figure formula

Value	Calculation
Relative availability of Disadvantaged Business Enterprises	(number of Disadvantaged Business Enterprise firms in the industry) divided by (all available firms in the market area)
Forecast weight	(amount in contracting area) divided by (total contract opportunities)
Weighted availability	(relative availability of Disadvantaged Business Enterprises) multiplied by (forecast weight)
Base figure	(relative availability) multiplied by (forecast weight)

Each contracting area was correlated to a North American Industry Classification System code so Denver Regional Council of Governments staff could determine the relative availability of Disadvantaged Business Enterprise firms located in Colorado compared to all firms performing that type of work in Colorado. Agency staff have chosen to use information gathered in the [Colorado Department of Transportation Overall Annual Disadvantaged Business Enterprise Goal for Transit report for Federal Fiscal Years 2023-2025](#).

Before beginning the base figure calculation, Denver Regional Council of Governments staff determined the relevant market area for the analysis. Using Federal Transit Administration guidance, staff defined the local market area based on the locations of most of the contractors and subcontractors that the agency does business with. Since all contracts and grants are awarded within the agency's metropolitan planning organization boundaries, it was determined to be the designated market area.

Staff identified the total number of firms within each industry within the Denver Regional Council of Governments market area using the most recent U.S. Census Bureau 2020 County Business Patterns. Staff determined the census data to be the most current available on all Colorado businesses (Disadvantaged Business Enterprise and non-Disadvantaged Business Enterprise firms). The County Business Patterns assigns a single primary industry (North American Industry Classification System code) to each business.

Table 3: Federal Transit Administration-assisted contracting opportunities

Contracting category	Industry code	Code description	Disadvantaged Business Enterprise firms	Total firms
Advertising	541850	Bus and transit advertising	3	31
Materials and supplies	423120	Vehicle supplies	4	96
Materials and supplies	423860	Transportation equipment	2	11
Transit services	485991	Paratransit services	1	42
Transit services	485999	Other ground transportation	3	16
Training	611430	Professional development	6	285
Training	611519	Bus driver training	0	75
Individual and family services	623210	Residential disability facilities	0	108
Individual and family services	624120	Elderly and disability services	0	395
Total	not applicable	not applicable	19	1,059

The resulting base figure is 1.8%, which is the total of all weighted availability in all work categories. Staff calculated the base figure by totaling the weighted availability for all work categories. A full table showing the North American Industry Classification System categories that staff used for potential contracting opportunities and the availability of Disadvantaged Business Enterprise firms can be found in Table 3: Federal Transit Administration-assisted contracting opportunities.


Step No.2: Adjustments to the base figure

Step 2 of the goal setting methodology adjusts the base figure to reflect, as accurately as possible, the Disadvantaged Business Enterprise participation Denver Regional Council of Governments staff would expect in the absence of discrimination. In addition, the data collected by staff on relevant research, including disparity studies and statistical disparities in the agency's market area, did not merit any further adjustments to the base figure.

The Colorado Department of Transportation set a goal of 2.44% for the fiscal years 2023-2025 goal setting period. The City of Loveland Transit set a goal of 0.29% for the fiscal years 2022-2024 period. The City of Fort Collins (Transfort) set an overall goal of 2.29% for the fiscal years 2024-2026 period. Based on these figures, the Denver Regional Council of Governments staff chose not to make further adjustments to its weighted goal.

Going forward, Denver Regional Council of Governments staff will use Federal Transit Administration guidance and partner with the Colorado Department of Transportation to consider the following factors to determine whether future adjustments are appropriate when updating this Disadvantaged Business Enterprise Program Plan:

- Past participation (the volume of work Disadvantaged Business Enterprises have performed in recent years) or other measures of demonstrated capacity.
- Evidence from disparity studies conducted in the agency's market area (including relevant studies commissioned by other contracting agencies in the agency's market area).
- Statistical disparities in the ability of Disadvantaged Business Enterprises to get financing, bonding and insurance.
- Data on employment, self-employment, education and training, and union apprenticeship programs.
- Other data that would help to better measure the percentage of work that Disadvantaged Business Enterprises would be likely to obtain in the absence of discrimination.



Appendix 5: Estimated race-neutral and race- conscious participation

The Denver Regional Council of Governments will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating Disadvantaged Business Enterprise participation. Its staff estimates that the Denver Regional Council of Governments will reach its overall Disadvantaged Business Enterprise participation goal of 1.8% entirely with race-neutral Disadvantaged Business Enterprise participation. The agency uses the following race-neutral means to increase Disadvantaged Business Enterprise participation:

- 1) Carrying out information and communications programs on contracting procedures and specific contract opportunities.
- 2) Ensuring distribution of the Colorado Department of Transportation Disadvantaged Business Enterprise directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

To ensure that the agency's Disadvantaged Business Enterprise Program will be narrowly tailored to overcome the effects of discrimination (if staff uses contract goals) the Denver Regional Council of Governments will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual Disadvantaged Business Enterprise participation and agency staff will track and report race-neutral and race conscious participation separately. For reporting purposes, race-

neutral Disadvantaged Business Enterprise participation includes, but is not necessarily limited to, the following:

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



Appendix 6: Demonstration of good-faith efforts

[Denver Regional Council of Governments
Disadvantaged Business Enterprise program
information request form](#)



Appendix 7: Uniform report of award commitments and payment form

[Federal Transportation Administration Semi-Annual Uniform Report of DBE Awards/Commitments and Payments](#)



**Disadvantaged Business
Enterprise Plan 2024**

Denver Regional Council of Governments
1001 17th St., Suite 700, Denver, CO 80202
drcog.org 303-455-1000