



Targeted Group Business (TGB) and Veteran-Owned Small Business Special Provisions

Purpose

The MnDOT Targeted Group Business (TGB) and Veteran-owned Small Business programs are part of the MnDOT initiative to increase small business participation on state funded projects. These programs are intended to provide eligible businesses with increased access to state contracting opportunities. Eligibility requirements for both programs are established pursuant to Minn. Stat. §16C.16 and Minn. Rule Parts 1230.1600-1820. TGBs and Veteran-owned Small businesses bidding as prime contractors may receive a preference in the bid amount, and contracts may include goals to increase participation of TGBs and Veteran-owned small businesses as subcontractors.

1. AUTHORITY

The Targeted Group Business and Veteran-owned Small Business programs are authorized in Minn. Stat. §161.321 as amended:

- 1.1 MnDOT may award a preference in the amount bid for this contract to targeted group and Veteran-owned small businesses; and
- 1.2 MnDOT may set a goal for the use of targeted group and Veteran-owned small businesses as sub-contractors on this contract.

2. ELIGIBILITY

Eligibility for TGB

- 2.1 Rules regarding eligibility and the designation of targeted group businesses are established by the Commissioner of the Minnesota Department of Administration and can be found at Minn. Rule Parts 1230.1600-1820. To participate in the MnDOT TGB program, a business must be certified at the time the bid is submitted. Information about the eligibility criteria and the process for obtaining TGB certification can be found on the Department of Administration's website at:
<http://www.mmd.admin.state.mn.us/mn02001.htm>
- 2.2 A certified business is eligible for the MnDOT TGB program if it belongs to a group that is designated as a targeted group business in the specified contracting category. The business must be 51% owned and operated by women, persons with a substantial physical disability, or specific minorities as determined by the Commissioner of Administration (Minn. Stat. §16C.16 Subd. 5). The following table shows the targeted groups for highway construction contracts:

**TABLE OF GROUPS EXPERIENCING DISPARITY IN
MINNESOTA DEPARTMENT OF TRANSPORTATION NON-FEDERAL
HIGHWAY CONSTRUCTION CONTRACTING & SUBCONTRACTING**
(Based on the 2009 Disparity Study)

GROUP	PRIME CONTRACTS	SUBCONTRACTS
African American	X	X
American Indian	X	X
Asian American	X	X
Hispanic American	X	X
Nonminority Women	X	X
Disabled*	X	X

Source: <http://www.mmd.admin.state.mn.us/disparity/orders/orderMnDOT.pdf>
Groups eligible as Targeted Group Businesses are marked with an X. "Disabled" means persons with a substantial physical disability as used in Minn. Stat. §16C.16 Subd. 5(a).

2.3 Contract qualifications and other contract requirements still apply.

Eligibility for Veteran-owned Small Businesses

2.4 The Veteran-owned small business (Veteran) program requirements are defined in Minn. Stat. §16C.16 Subd.6a. The business must be a certified small business that is 51% owned and operated by:

2.4.1 Recently separated veterans, who are veterans as defined in Minnesota Statutes §197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the Commissioner of Veterans Affairs; or

2.4.2 Veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs (VA); or

2.4.3 Any other veteran-owned small business verified by the VA as such. Verified veteran-owned small businesses may be listed in the Vendor Information Pages database at www.vetbiz.gov; or it may provide a copy of the VA issued notice of verification showing that the business is approved as a veteran-owned small business; the letter must be issued within the 24 month period prior to the bid proposal due date.

2.5 Contract qualifications and other contract requirements still apply. MnDOT may request the Veteran business submit information demonstrating it meets the requirements of ownership and control, small business definitions, or other eligibility criteria.

3. PREFERENCE IN BIDDING

- 3.1 TGB and Veteran businesses will receive a preference of up to 6% of the amount of its bid, not to exceed \$60,000.00. The preference will be applied only for the purpose of evaluating bids, and will not be used to determine the contract award amount or payment due to the contractor under the contract. Eligible bidders must complete the Preference Form included herein.
- 3.2 **A bidder requesting the preference must submit the Preference Form according to the following:**

The Preference Form must be sent via E-mail to biddocsubmittal.dot@state.mn.us; place the State Project number in the subject line. The form must be received by MnDOT no later than the date and time of the bid letting.

4. SUBCONTRACTOR GOALS

- 4.1 If the bidder is an eligible TGB or Veteran business, that portion of the work to be self-performed by the bidder will count towards the subcontractor goals for this contract.
- 4.2 If the bidder is not an eligible TGB or Veteran business, the bidder must make a good faith effort to obtain the participation of TGB and Veteran subcontractors and/or suppliers as a condition of awarding the contract. MnDOT has established the following goals for subcontractors and/or suppliers:
- Veteran goal _____% TGB goal _____%
- 4.3 Only the participation of businesses deemed eligible by the Minnesota Department of Administration under Minn. Stat. §16C.16 or Minn. Rule Parts 1230.1600-1820 will count towards the TGB or Veteran business goals.

5. METHODS TO ATTAIN THE SUBCONTRACTOR GOALS

- 5.1 The goal may be attained by:
- 5.1.1 Subcontracting with a TGB and Veteran businesses deemed eligible by the Minnesota Department of Administration under Minn. Stat. §16C.16 or Minn. Rule Parts 1230.1600-1820 To prove the existence of such a subcontract, the Apparent Low Bidder (ALB) must submit a signed agreement or a signed affidavit committing it to enter into such a subcontract;
- 5.1.2 Leasing equipment from eligible TGB and Veteran businesses;
- 5.1.3 Entering into a joint venture with eligible TGB and Veteran businesses. This joint venture must be approved in writing by the MnDOT Office of Civil Rights prior to bid opening;

- 5.1.4 Purchasing materials and supplies from eligible TGB and Veteran businesses. Generally, sixty percent (60%) of the supplier's contracted amount will be credited toward the TGB and Veteran business goals;
- 5.1.5 Using other services as approved in writing by the MnDOT Office of Civil Rights prior to bid opening.

6. SOLICITING TGB AND VETERAN BUSINESSES

- 6.1 **All bidders should make every reasonable effort to subcontract work to TGB and Veteran businesses through good faith negotiations and solicitations in advance of the dates specified for submitting and opening of bids.**
- 6.2 In order to fulfill a TGB and Veteran business goal, the firms utilized as TGB and Veteran business subcontractors or suppliers must be deemed eligible by the Minnesota Department of Administration under Minn. Stat. §16C.16 or Minn. Rule Parts 1230.1600-1820 **prior to the date of the bid opening**. The TGB and Veteran business directories, which are accessible **“through”** or **“linked from”** MnDOT’s Office of Civil Rights’ website, includes the names, addresses and contact information of all eligible TGB and Veteran business firms. MnDOT makes no representation as to any TGB or Veteran business’s technical or financial ability to perform the work. Prime contractors are solely responsible for performing due diligence in hiring TGB and Veteran business subcontractors. A TGB or Veteran business subcontractor’s failure to perform the work will not be considered justification for a compensation increase.

7. IDENTIFYING TGB AND VETERAN BUSINESS COMMITMENT RATES

- 7.1 All bidders must identify the percentage of TGB and Veteran business participation the bidder proposes to utilize on the project at the time of bid. This proposed commitment rate may be used in evaluating good faith efforts in comparison to the performance of other bidders in meeting the TGB and Veteran business goals.

8. APPARENT LOW BIDDER (ALB) SUBMITTAL OF INFORMATION

- 8.1 The ALB must identify the efforts it made to meet both the TGB and Veteran business subcontractor goals. The ALB must submit the information described in this section to the MnDOT Office of Civil Rights (OCR). All bidders are required to thoroughly document these solicitation efforts. The ALB shall justify any bids, quotes, or proposals it rejects from eligible, qualified TGB and Veteran businesses.
- 8.2 **THE INFORMATION IN SECTIONS 8.3 THROUGH 8.6 MUST BE SUBMITTED BEFORE OR ON THE SUBMISSION DUE DATE. The Submission Due Date is the fifth business day after the bid letting date, unless the MnDOT Director of the Office of Civil Rights grants a written extension for good cause shown. The five day period starts the business day following the bid letting date. Information sent by fax or personal delivery must be received by the MnDOT Office of Civil Rights no later than 4:30PM central time on the Submission Due Date. Information sent by U.S. mail must be postmarked no later than the Submission Due Date. FAILURE TO SUBMIT ALL**

REQUIRED INFORMATION BY THE SUBMISSION DUE DATE WILL RESULT IN REJECTION OF YOUR BID ON THE BASIS THAT YOU ARE NOT A RESPONSIBLE BIDDER. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.

- 8.3 The ALB must either (1) identify TGB and Veteran business participation sufficient to meet both the TGB and Veteran business goals; or (2) request a waiver of either, or both, of the goal(s) and demonstrate, through its adequate good faith efforts to meet the goal(s), that TGB or Veteran firms are not reasonably available. The ALB must submit the following documents to the MnDOT Office of Civil Rights:
- 8.4 If the bidder meets the established goals for both the TGB and Veteran business programs, it must complete and submit only the following forms by the submission due date:
- Bidders List
 - Exhibit A Form for each TGB and Veteran business the bidder intends to use
- 8.5 If the bidder does not meet the TGB goal, Veteran goal, or both, it must apply for a waiver from the relevant goal requirement(s). The commissioner's procedure for granting a waiver focuses on the ALB's good faith efforts as outlined in section 11. If, after making adequate good faith efforts, the ALB is unable to obtain sufficient TGB or Veteran participation to meet the goal(s), the commissioner will find that TGB or Veteran firms are not reasonably available to meet the goal(s) and will grant a waiver. The waiver will apply to the difference between the ALB's commitment rate(s) and the amount of the goal(s). Failure to request a waiver by the submission due date will result in rejection of your bid on the basis that you are not a responsible bidder. To request a waiver, 1) the bidder must complete and submit the Waiver Form in addition to the Bidders List form and an Exhibit A form for each TGB and Veteran business the bidder intends to use and 2) the bidder must complete and submit the good faith efforts documents as instructed.
- 8.6 To submit a waiver request, the bidder must complete and submit the following good faith efforts documents by the submission due date:
- Waiver Form
 - Bidders List
 - Exhibit A form for each TGB and Veteran business the bidder intends to use
 - Certificate of Good Faith Efforts
 - Any additional information the bidder provides to demonstrate its good faith efforts

Note: Waiver Form and Certificate of Good Faith Efforts must be completed only if the ALB did not obtain sufficient TGB and/or Veteran business participation to meet both the TGB and Veteran subcontracting goals.

- 8.7 The ALB must submit the form **TGB and Veteran Business Description of Work and Field Monitoring Report (Exhibit A)**. A separate form must be submitted for each TGB

and Veteran business the ALB proposes to utilize on the project. This must *be accompanied by proof of commitment to use the TGB and Veteran business*, such as copies of signed agreements, affidavits, or letters of intent. These commitments will be used to determine the "commitment rate" (the percentage of TGB and Veteran business participation). The ALB must commit to using the proposed TGB and Veteran businesses for not less than the percentage of the TGB and Veteran business participation shown on the TGB and Veteran business Description of Work and Field Monitoring Report (Exhibit A). An ALB will be deemed a non-responsible bidder if it fails to include in its submission a completed TGB and Veteran business Description of Work and Field Monitoring Report (Exhibit A) for each TGB and Veteran business along with the required signed agreements or affidavits.

- 8.8 The ALB must submit information that demonstrates its adequate good faith efforts to achieve the TGB and Veteran business goal. This information can include, but is not limited to, copies of solicitation letters, faxes, and emails to TGB and Veteran business firms. The ALB must identify the actions it took to achieve the TGB and Veteran business goals.

9. FAILURE TO SUBMIT INFORMATION

- 9.1 If the ALB fails to submit the information required by the previous section, the ALB is a non-responsible bidder and MnDOT will reject the ALB's bid. **All required information must be submitted by the Submission Due Date.** The information submitted must state the ALB's commitment to use TGB and Veteran businesses for not less than the commitment rate.

10. IF BOTH TGB AND VETERAN GOALS ARE NOT MET, A GOOD FAITH EFFORTS REVIEW WILL BE CONDUCTED

- 10.1 An ALB that does not commit to meeting both the TGB and Veteran business goals is thereby not disqualified if the ALB demonstrates that it made adequate good faith efforts to meet the TGB or Veteran Business goals and, thus, that TGB or Veteran businesses are not reasonably available. An ALB that does not commit to meet both the TGB and Veteran business goals and fails to show that adequate good faith efforts were made is a non-responsible bidder and MnDOT will reject its bid.
- 10.2 A TGB or Veteran business that bids as a prime contractor will be deemed to have met either the TGB or Veteran business goal if the value of the work performed by its own forces, combined with any work that it has committed to be performed by TGB and Veteran business subcontractors and TGB and Veteran business suppliers, meets or exceeds the TGB and Veteran business subcontractor goals.

11. EVALUATION OF GOOD FAITH EFFORTS

- 11.1 If an ALB has a TGB and/or Veteran business commitment rate that is less than either or both the TGB and Veteran business goals, then the ALB must demonstrate that it made adequate good faith efforts in attempting to meet the TGB and/or Veteran business goals

that failed to meet. MnDOT's Office of Civil Rights staff will review the GFE documents submitted by the ALB and the TGB and Veteran business commitment submitted by each bidder to evaluate the ALB's commitment rate.

- 11.2 In the bidder's request for a waiver from the TGB and/or Veteran business participation goal(s), the bidder must demonstrate that it made adequate good faith efforts to meet the goal. MnDOT's Office of Civil Rights staff will review the good faith effort documents submitted by the bidder and make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts and, thus, whether TGB or Veteran businesses are reasonably available. MnDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain TGB and Veteran business participation sufficient to meet the contract goals. Mere pro forma efforts are not good faith efforts to meet these contract requirements. The ALB must show that it took all necessary and reasonable steps to achieve the TGB and Veteran business goals which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient participation, even if they were not fully successful. In evaluating the bidder's adequate good faith efforts, MnDOT will consider the following list of actions. This is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. Compliance with the adequate good faith efforts requirement will be determined on a case-by-case basis.

11.2.1 Solicitation

Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and /or written notices) the interest of eligible TGBs and Veteran businesses that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the TGBs and Veteran businesses to respond to the solicitation. The bidder must determine with certainty if the TGBs and Veteran businesses are interested by taking appropriate steps to follow up initial solicitations.

11.2.2 Selection of Work

Selecting portions of the work to be performed by TGBs and Veteran businesses in order to increase the likelihood that the project goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate TGB and Veteran business participation, even when the prime contractor might otherwise perform these work items with its own forces.

11.2.3 Providing Information and Assistance

Providing interested TGBs and Veteran businesses with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

11.2.4 Negotiation

Negotiating in good faith with interested TGBs and Veteran businesses. It is the bidder's responsibility to make a portion of the work available to TGB and Veteran business subcontractors and suppliers and to select those portions of the work or material needs consistent with the available TGB and Veteran business subcontractors and suppliers, so as to facilitate TGB and Veteran business participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of TGBs and Veteran businesses that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for TGB and Veteran businesses to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including TGB and Veteran business subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using TGBs and Veteran businesses is not in itself sufficient reason for the bidder's failure to meet the contract TGB or Veteran business goal, as long as such costs are reasonable. Also the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from TGB and Veteran businesses if the price difference is excessive or unreasonable.

11.2.5 Rejection of TGBs or Veteran businesses

Not rejecting TGB or Veteran businesses as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal(s).

11.2.6 Financial Assistance

Making efforts to assist interested TGB and Veteran businesses in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.

11.2.7 Equipment Assistance

Making efforts to assist interested TGB and Veteran businesses in obtaining necessary equipment, supplies, materials, or related assistance or services.

11.2.8 Recruitment

Effectively using the services of available community organizations; contractors' groups; State and local business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of TGBs and Veteran-businesses.

11.2.9 Any other evidence that the bidder submits which shows that the bidder has made reasonable good faith efforts to meet the TGB or Veteran-business goals.

11.2.10 In addition, MnDOT may also take into account the following:

- a. Whether the bidder's documentation reflects a clear and realistic plan for achieving the TGB or Veteran business goals.
- b. The performance of other bidders in meeting the TGB and Veteran business goals. For example, when the apparent successful bidder fails to meet the goals, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goals. If the apparent successful bidder fails to meet the TGB or Veteran business goals, but meets or exceeds the average TGB or Veteran business participation obtained by other bidders, MnDOT may view this in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

12. Administrative Reconsideration

- 12.1 If OCR determines that the apparent low bidder (ALB) failed to make adequate good faith efforts and therefore does not grant a waiver, the ALB may request administrative reconsideration. If the ALB does not make a timely written request for administrative reconsideration as described herein, the ALB will be deemed to have waived its right to request administrative reconsideration.
- 12.2 The ALB's request for administrative reconsideration must be made in writing. Requests sent by fax or personal delivery must be received by the MnDOT Office of Civil Rights no later than 4:30 PM on the fifth business day after the ALB receives written notice of the determination. Administrative reconsideration requests sent by U.S. mail must be postmarked no later than the fifth business day after the ALB receives notice of the determination. The ALB is deemed to have notice as of the date indicated on the certified mail receipt signed by the ALB, or its representative, at the time of delivery. The ALB must submit the written request for reconsideration to the attention of **MnDOT Deputy Commissioner at MnDOT, 395 John Ireland Blvd. St. Paul, Minnesota 55155; or by fax 651-366-4795. A copy of the request must be sent to the Director of the Office of Civil Rights at the same address or fax 651-366-3129.**
- 12.3 The Commissioner of MnDOT will designate officials to serve as Reconsideration Officials. The Reconsideration Officials shall not have any role in the original determination that the ALB failed to meet the TGB or Veteran business subcontractor goal or failed to make adequate good faith efforts to do so.

In the reconsideration process, the ALB will have the opportunity to:

- Provide written documentation or argument concerning the issue of whether the ALB met the goal or made adequate good faith efforts to do so.

- Meet in person with the Reconsideration Officials to discuss the issue of whether the ALB met the goal or made adequate good faith efforts to do so.
- 12.4 The Reconsideration Officials will reconsider the record documenting the good faith efforts of the ALB. The reconsideration process will include the documents and arguments that the ALB is permitted to submit. The reconsideration process is a review of only the good faith efforts made by the ALB as of the Submission Due Date. Good faith efforts made subsequent to that date will not be considered.
- 12.5 MnDOT will provide the ALB with a written decision on reconsideration, explaining the basis for the determination **within 5 business days following the date scheduled for the ALB to meet with the Reconsideration Officials to discuss the issue.**

13. Counting TGB and Veteran Participation; Commercially Useful Function

- 13.1 In accordance with Minn. Rule Part 1230.1820, MnDOT will determine the percentage of TGB and Veteran participation that will count toward TGB and Veteran goals as follows:
- 13.1.1 Credit toward the goal established for the contract will be at 100 percent for subcontractors who provide labor, materials, and supplies and at 60 percent for subcontractors who provide supplies and materials only.
- 13.2 When a TGB or Veteran subcontractor participates in a contract, MnDOT will only count the value of the work actually performed by the TGB or Veteran toward TGB or Veteran subcontractor goals. This includes the following:
- 13.2.1 The entire amount of the portion of this MnDOT construction contract that is performed by the TGB or Veteran subcontractor's own forces. Include the cost of supplies and materials obtained by the TGB or Veteran subcontractor for the work of the contract, including supplies purchased or equipment leased by the TGB or Veteran subcontractor (except supplies, and equipment the TGB or Veteran subcontractor purchases or leases from the prime contractor or its affiliate).
- 13.2.2 The entire amount of fees or commissions charged by a TGB or Veteran subcontractor firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a MnDOT contract, counts toward TGB or Veteran subcontractor goals, provided that MnDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 13.2.3 When a TGB or Veteran subcontractor subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward TGB or Veteran goals only if the TGB or Veteran subcontractor is itself a TGB or

Veteran business. Work that a TGB or Veteran subcontractor subcontracts to a non-TGB or non-Veteran firm will not count toward TGB or Veteran goals.

- 13.3 When a TGB or Veteran subcontractor performs as a participant in a joint venture, MnDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the TGB or Veteran subcontractor performs with its own forces toward TGB or Veteran goals.
- 13.4 MnDOT will count expenditures of a TGB or Veteran subcontractor contractor toward TGB or Veteran subcontractor goals only if the TGB or Veteran subcontractor is performing a commercially useful function on that contract.
- 13.4.1 A TGB or Veteran subcontractor performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the TGB or Veteran subcontractor must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a TGB or Veteran subcontractor is performing a commercially useful function, MnDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and TGB or Veteran credit claimed for its performance of the work, and other relevant factors.
- 13.4.2 A TGB or Veteran subcontractor does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of TGB or Veteran subcontractor participation. In determining whether a TGB or Veteran subcontractor is such an extra participant, MnDOT may examine similar transactions, particularly those in which TGB or Veteran subcontractors do not participate.
- 13.4.3 At least 75 percent of the subcontracts awarded to a TGB or Veteran must be performed by the business to which the subcontract is awarded or another TGB or Veteran business respectively. If a TGB or Veteran subcontractor does not perform or exercise responsibility for at least 75 percent of the total cost of its contract with its own work force, or the TGB or Veteran subcontractor subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MnDOT may presume that it is not performing a commercially useful function.
- 13.4.4 When a TGB or Veteran subcontractor is presumed not to be performing a commercially useful function as provided in the preceding paragraph, the TGB or Veteran subcontractor may present evidence to rebut this presumption. MnDOT

may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

- 13.5 MnDOT will use the following factors in determining whether a TGB or Veteran trucking company is performing a commercially useful function:
- 13.5.1 The TGB or Veteran subcontractor must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of the meeting TGB or Veteran goals.
 - 13.5.2 The TGB or Veteran subcontractor must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - 13.5.3 The TGB or Veteran subcontractor receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.
 - 13.5.4 The TGB or Veteran subcontractor may lease trucks from another TGB or Veteran subcontractor firm, including an owner-operator that is an eligible TGB or Veteran subcontractor. The TGB or Veteran subcontractor who leases trucks from another TGB or Veteran subcontractor receives credit for the total value of the transportation services the lessee TGB or Veteran subcontractor provides on the contract.
 - 13.5.5 The TGB or Veteran subcontractor may also lease trucks from a non-TGB or non-Veteran subcontractor firm, including an owner-operator. The TGB or Veteran subcontractor who leases trucks from a non-TGB or Veteran subcontractor is entitled to credit for the total value of transportation services provided by non-TGB or non-Veteran subcontractor lessees not to exceed the value of transportation services provided by TGB or Veteran trucks on the contract. Additional participation by non-TGB or non-Veteran subcontractor lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - 13.5.6 For purposes of this section, a lease must indicate that the TGB or Veteran subcontractor has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the TGB or Veteran, so long as the lease gives the TGB or Veteran subcontractor absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the TGB or Veteran business.
- 13.6 MnDOT will count expenditures with TGB or Veteran subcontractor(s) for materials or supplies toward TGB or Veteran subcontractor goals as provided in the following:

- 13.6.1 MnDOT will count 100% of the cost of the materials or supplies toward TGB or Veteran subcontractor goals if the materials or supplies are obtained from a TGB or Veteran manufacturer.
- 13.6.2 For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.
- 13.6.3 If the materials or supplies are purchased from a TGB or Veteran regular dealer, MnDOT will count 60% of the cost of the materials or supplies toward TGB or Veteran goals.
- 13.6.4 For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.
- A. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
 - B. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - C. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
- 13.6.5 With respect to materials or supplies purchased from a TGB or Veteran which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward TGB or Veteran goals, provided MnDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward TGB or Veteran goals.
- 13.7 MnDOT will not count the participation of a TGB or Veteran subcontractor toward the contractor's final compliance with its TGB or Veteran s subcontractor obligations on a contract until the amount being counted has been actually paid to the TGB or Veteran business(s).

14. Failure to Fulfill TGB or Veteran Business Subcontract Commitments

- 14.1 A contractor that fails to fulfill the TGB and Veteran business commitments is subject to appropriate administrative sanctions if the following factors exist:
- a. the contractor fails to either (1) meet, or (2) make adequate good faith efforts to meet, the TGB and Veteran business commitment it represented in its good faith efforts submission;
 - b. the failure is through no fault of the TGB and Veteran business; and
 - c. the failure is not the result of a modification made by MnDOT or the project owner that reduces the scope of work the TGB and Veteran business is to perform.
- 14.2 Sanctions may include, but are not limited to, MnDOT withholding progress payments and monetary deductions from the contract proceeds. MnDOT may deduct a sum equal to the portion of the TGB and Veteran business commitment not fulfilled.
- 14.3 MnDOT may allow for an adjustment of the contractor's TGB and Veteran business commitment if a TGB or Veteran business participant that was part of the original commitment fails to perform and cannot be replaced with another TGB or Veteran business subcontractors despite the contractor's adequate good faith efforts to find another TGB or Veteran business to perform the same amount of work.

15. TGB AND VETERAN BUSINESS REPLACEMENT

- 15.1 The contractor must request prior written consent from MnDOT to terminating a TGB or Veteran business. Written consent is required if the termination occurs any time after a contractor submits an affidavit, subcontract or the TGB and Veteran business Description of Work and Field Monitoring Report (Exhibit A), indicating the TGB or Veteran business firm will perform on the project. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a TGB and Veteran business subcontractor with its own forces or those of an affiliate, a non-TGB or non-Veteran business, or with another TGB or Veteran business firm.
- 15.2 MnDOT will only provide such written consent if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the TGB or Veteran business firm. Good cause includes the following circumstances:
- a) The listed TGB or Veteran business subcontractor fails or refuses to execute a written contract;
 - b) The listed TGB or Veteran subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided,

however, that good cause does not exist if the failure or refusal of the TGB or Veteran subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the prime contractor;

- c) The listed TGB or Veteran subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
 - d) The listed TGB or Veteran subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e) The listed TGB or Veteran business subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings under applicable state law;
 - f) MnDOT has determined that the listed TGB or Veteran business subcontractor is not a responsible contractor;
 - g) The listed TGB or Veteran business subcontractor voluntarily withdraws from the project and provides to MnDOT written notice of its withdrawal;
 - h) The listed TGB or Veteran business is ineligible to receive TGB or Veteran business credit for the type of work required;
 - i) A TGB or Veteran business owner dies or becomes disabled with the result that the listed TGB or Veteran business contractor is unable to complete its work on the contract;
 - j) Other documented good cause that MnDOT determines compels the termination of the TGB or Veteran business subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a TGB or Veteran business it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the TGB or Veteran business contractor was engaged, or so that the prime contractor can substitute another TGB or Veteran business or non-TGB or non-Veteran business contractor after contract award.
- 15.3 Before transmitting to MnDOT its request to terminate and/or substitute a TGB or Veteran business subcontractor, the prime contractor must give notice in writing to the TGB or Veteran business subcontractor, with a copy to MnDOT, of its intent to request to terminate and/or substitute, and the reason for the request.
- 15.4 The prime contractor must give the TGB or Veteran business five days to respond to the prime contractor's notice and advise MnDOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why MnDOT should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), MnDOT may provide a period of shorter than five days.

- 15.5 In addition to post-award terminations, this process applies to pre-award deletions of or substitutions for TGB or Veteran business firms put forward by the ALB in negotiated procurements. MnDOT will impose appropriate administrative sanctions for non-compliance with these removal requirements.
- 15.6 MnDOT staff may assist the contractor, when requested, in identifying TGB or Veteran business replacement firms. This assistance may include but is not limited to:
- 15.6.1 Providing the contractor with information regarding the availability of other TGB and Veteran businesses.
 - 15.6.2 Providing the contractor with assistance in locating available TGB and Veteran businesses.

16. PAYMENTS

- 16.1 Minnesota Statutes §16A.1245 requires that the prime contractor agrees to pay each subcontractor within ten (10) days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor is subject to pay interest charges of 1-1/2 percent per month, or any part of a month, to the subcontractor on any undisputed amount not paid to the subcontractor within the ten (10) day period. This provision applies to
- 16.2 Contractors making payments to Contractors, Subcontractors, Suppliers, and Service Providers, regardless of their tier or TGB or Veteran status, are required to complete and submit Contractor Payment Form(s) to the MnDOT Office of Civil Rights (OCR), each time payments are made to subcontractors until final payment is made, no later than ten (10) days after receiving payment from MnDOT.
- 16.3 Failure to comply with the Contractor Payment Form submission requirement or Minnesota's prompt payment law may cause progress payments to be withheld.
- 16.4 At the conclusion of the contract, the prime contractor must present the TGB and Veteran-owned Businesses Total Payment Affidavit to the MnDOT Office of Civil Rights. The affidavit must show the total dollar amount of work performed by each TGB and Veteran business. Submission of this information is a condition of payment.
- 16.5 Bidders who submit a bid are hereby notified that the Minnesota False Claims Act (Minn. Stat. §15C.02) applies to statements and certifications made in connection with the TGB and Veteran programs.



**TARGETED GROUP AND VETERAN-OWNED SMALL BUSINESSES
PREFERENCE FORM**

Name of Contractor/Consultant	S.P. #	Date of Letting
Address	City	State/Zip
Contact Person/ EEO Officer	Phone Number	E-Mail Address

The business is an eligible TGB as shown in the MN Department of Administration online directory at: <http://www.mmd.admin.state.mn.us/process/search/>

OR

The business is an eligible Veteran-owned small business owned and operated by either (check the box that applies and attach the certification documents required with your response to this solicitation):

Veterans as defined in Minnesota Statutes §197.447, who are verified by the United States Department of Veterans Affairs as being a veteran-owned small business as shown in the online directory at: <http://www.vip.vetbiz.gov> The business must be VA verified at the time proposals are due.

OR

Recently separated veterans, who are veterans as defined in Minnesota Statutes §197.447, who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs. The bidder must provide:

- A copy of the verification as a veteran-owned small business issued by the United States Department of Veterans Affairs (VA). The business must be VA verified at the time proposals are due.
- Discharge form (DD-214) dated on or after September 11, 2001 with condition honorable.

OR

Veterans as defined in Minnesota Statutes §197.447, who are verified by the United States Department of Veterans Affairs as being a service-disabled veteran-owned small business. The bidder must provide:

- A copy of the verification as a service-disabled veteran-owned small business issued by the United States Department of Veterans Affairs (VA). The business must be VA verified at the time proposals are due.

You must submit this form and the documentation required above with your response in order to be considered for this preference.

I certify that the information contained herein is true, accurate, and complete.

Signed _____
Bidder or authorized representative

Office of Civil Rights
TARGETED GROUP AND VETERAN-OWNED SMALL BUSINESS
REQUEST FOR WAIVER FORM

S.P. _____

Letting Date _____

I hereby request a waiver from the Targeted Group Business (TGB) subcontract goal on the grounds that qualified TGBs are not reasonably available. I have provided a detailed explanation of the efforts I made to obtain TGB participation and the determination that TGBs are not reasonably available to perform on this project.

I hereby request a waiver from the Veteran-owned businesses subcontract goal on the grounds that qualified Veteran-owned businesses are not reasonably available. I have provided a detailed explanation of the efforts I made to obtain Veteran-owned business participation and the determination that Veteran-owned businesses are not reasonably available to perform on this project.

I certify that the information contained herein is true, accurate, and complete.

Signed _____

Bidder or Authorized Representative

Bidders requesting a waiver must complete and submit the following:

1. A summary explaining the bidder's determination that TGB and/or Veteran-owned businesses are not reasonably available.
2. Certificate of Good Faith Efforts
3. Affidavit of Good Faith Efforts
4. Bidders List
5. Description of Work (Exhibit A) for each TGB or Veteran-owned business participating on the project.

Prime Contractor _____ State Project # _____



TGB & Veteran-Owned Business Description of Work (Exhibit A) and Field Monitoring Report

A contract will not be awarded to the Prime Contractor unless this form is submitted for each TGB and Veteran-owned business participating in the contract. This form is complete when the TGB or Veteran-owned business subcontractor has filled in **all of the applicable information in sections A and B, and signs in section C.** PLEASE PRINT CLEARLY OR TYPE.

**Section (A): (All TGB & Veteran-Owned Subcontractors and Suppliers, including Trucking firms must complete this Section.)
MUST BE COMPLETED BY THE PRINCIPAL**

Check One: TGB or Veteran-Owned Business

Letting Date: _____ State Project Number: _____

Prime Contractor: _____ Phone #: _____

TGB/Veteran Subcontractor: _____ Phone #: _____

TGB/Veteran Principal Name: _____ Total Subcontract \$: _____

TGB/Veteran Participation Claimed: Percent _____ % Amount _____

1. Did you bid and sign a subcontract agreement with the above-named prime contractor? _____
2. Are the items, quantities, and prices listed on the subcontract agreement or affidavit correct? _____
3. List the line items to be performed: _____

4. Are there any other agreements not addressed in the subcontract? If yes, please explain: _____

5. If equipment to be used on this contract is not owned by the TGB/Veteran-owned business, please provide the following information:
 - a. Will the renting or leasing include any of the following: (Attach a copy of the lease/rental agreement(s)).
Equipment _____ Insurance _____ Operator _____ or Maintenance _____
 - b. Lessor's name: _____
Amount to be paid: _____ Number of days to be used: _____
6. Will there be any other firm(s) providing work listed in your subcontract?
If yes, answer the following: Firm's Name: _____ \$ amount of the work: _____
7. What is the name of the person supervising your work on this project? _____
Is this your employee? _____
8. How many people will you be employing on this project? _____ Minorities: _____ Females: _____
9. Total dollar amount of materials to be supplied? _____
10. Who are you purchasing the materials from? _____
11. Please submit Purchase Agreement and/or Purchase Order from manufacturer(s) or primary material supplier(s).
NOTE: This Exhibit 'A' will not be approved without the Purchase Agreement/Purchase Order.
12. Please list all subcontracts that your firm will be performing during the current construction season including contracts that are not in the TGB or Veteran-owned Business Programs (attach additional sheet if necessary)

	Project Number	Prime Contractor	Project Location	# of Working Days
1.				
2.				
3.				

Section (B): TO BE COMPLETED ONLY BY THE TGB OR VETERAN-OWNED BUSINESS TRUCKER

1. The number of hours contracted or quantities to be hauled on this project? _____
2. How many fully operational units will be used on this Project? _____ (Tractor/trailers: _____ Dump trucks: _____)
3. How many fully operational units will be yours? _____ (Dump trucks: _____ Tractors/trailers: _____)
4. How many other units will be yours? _____ (Tractors: _____ Trailers: _____)
5. If ITO's or trucking companies are to be used on this project answer the following (attached additional sheet if necessary):

	Name of ITO/Company	Dollar Amount of Contract/Agreement	Number of Dump Trucks, Tractors/Trailers (specify)
1.			
2.			
3.			

Section (C): (All TGB and Veteran-owned Subcontractors and Suppliers, including Trucking firms, must complete Section C.)

I hereby certify that the information presented above is correct. I agree to inform the Office of Civil Rights in writing of any changes within 10 days of the change(s).

Company: _____

Principal: _____
Signature
Title
Date

Section (D): TO BE COMPLETED BY MnDOT OFFICE OF CIVIL RIGHTS STAFF PERSON

Project Number: _____ District # _____
MnDOT OCR Staff Person: _____ Phone No. _____
Project Engineer: _____ On-site Phone #: _____
Office Phone #: _____

Section (E): TO BE COMPLETED BY PROJECT ENGINEER WHEN THE TGB OR VETERAN-OWNED BUSINESS HAS COMPLETED 1/3 TO 1/2 OF ITS WORK ON THE CONTRACT

1. Does it appear that the firm is performing the work specified in (Exhibit "A") description of work?
Yes _____ No _____
2. Does it appear that the subcontractor is managing their portion of the project and using their own company employees?
Yes _____ No _____
3. Does it appear that the subcontractor is providing the equipment for their items of work or other work specified?
Yes _____ No _____
4. Does it appear that the quality of the subcontractor's performance, scheduling and project management are meeting industry standards? Yes _____ No _____
5. Comments: _____

NOTE: If you, as the Project Engineer, have checked "NO" to any of the above questions or have any other comments, it is important that you contact the MnDOT Office of Civil Rights Staff Person assigned to this project.

Project Engineer: _____ Date: _____



**MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS**

CERTIFICATE OF GOOD FAITH EFFORTS

S.P. _____ Letting Date _____ **TGB** **Veteran-owned Business**
 Prime Contractor _____ Commitment _____ Commitment _____
 Low Bid _____ Goal _____ Goal _____

LIST YOUR SOLICITATION OF ALL SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS

Subcontractor/Supplier/Service provider	TGB	VET	Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
				Letter	Phone		
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

(Make additional copies of this form as necessary)

I certify that the information above is true, accurate, and complete.

Bidder or Authorized Representative

Page ____ of ____



**MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS**

BIDDERS LIST

S.P. _____ Letting Date _____ **TGB** **Veteran-owned Business**
 Prime Contractor _____ Commitment _____ Commitment _____
 Low Bid _____ Goal _____ Goal _____

List all comparative quotes of participants performing on the project and participants that bid. Include Subcontractors, Suppliers, Sub-consultants & Service providers.

Name, Contact Name and Phone number of Contractor *	Check (√) Firms That Will Be Used	Description of Work	Dollar Amount of Subcontract/Quote
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

* Please indicate with an asterisk (*) or check mark (√) which subcontractors, suppliers, sub-consultants & service providers you will be using on the project.

(Make additional copies of this form as necessary)

**Minnesota Department of Transportation
Office of Civil Rights**

Contractor Payment Form

State Project Number: _____

Prime _____ Subcontractor _____

Payment Reporting Period: (From: _____ To: _____)

Instructions: All Contractors making payments to subcontractors, regardless of their tier or TGB/Veteran-owned business status, are required to complete and submit this form to MnDOT's Office of Civil Rights (OCR) until final payment is made. Include payments to subcontractors, service providers, sub-consultants & independent contractors. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to the prime contractor to be withheld. Submit one copy of this form to the OCR Office and one to the project engineer, no later than ten (10) days after receiving payment from MnDOT.

Contractor's Name, Address, Telephone Number		Original Contract Amount	Committed %		Actual to Date	
			TGB	Veteran	TGB	Veteran
Name of Subcontractor/Supplier	TGB/Vet (indicate)	Description of Work			Subcontract Amount	
1.		1.			1.	
2.		2.			2.	
3.		3.			3.	
Amount of Current Payment		% Paid to date	Final Payment? Yes / No			
1.		1.	1.			
2.		2.	2.			
3.		3.	3.			
Company Official's Signature & Title		Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)			

(This form may be submitted in an alternate format)

I certify that the information above is true, accurate, and complete.

Bidder or Authorized Representative

Page ____ of ____

**Minnesota Department of Transportation
Office of Civil Rights**

GOOD FAITH EFFORTS AFFIDAVIT

STATE OF MINNESOTA
COUNTY OF _____

I, _____ being first duly sworn, state as follows:

1. I am the _____ of
_____ organization that has been identified as the
apparent low bidder of the State Project _____.

2. I have the authority to make this affidavit for and on behalf of the apparent low bidder.

3. The information provided in the attached Certificate of Good Faith Efforts is true and
accurate to the best of my belief.

Signed _____
Bidder or authorized representative Title Date

Subscribed and sworn to before me

This _____ day of _____, 20____

Notary Public

My commission expires _____, 20_____