

DISADVANTAGED BUSINESS ENTERPRISES (DBE) SPECIAL PROVISIONS – CONSULTANT CONTRACTS

POLICY STATEMENT

It is the policy of the Minnesota Department of Transportation (Mn/DOT) that DBEs, as defined in 49 C.F.R. Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, Mn/DOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation (DOT)-assisted contract because of sex, race, religion, or national origin. The Minnesota Department of Transportation (Mn/DOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the DOT, 49 C.F.R. Part 26.

Mn/DOT has received federal financial assistance from DOT, and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 C.F.R. Part 26. The DBE requirements of 49 C.F.R. Part 26 apply to this contract. In this regard, the Contractor will take all necessary and reasonable steps in accordance with 49 C.F.R. Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform this contract.

CONTRACT ASSURANCE

The Contractor (Consultant/Proposer), Sub-recipient or Subcontractor (Subconsultant) shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as Mn/DOT deems appropriate.

SUBMITTAL OF DOCUMENTATION

For all contracts where DBE goals are set, regardless of contract size, the Contractor will be required to: (a) propose the participation of specific DBEs to meet the goal; or (b) demonstrate good faith efforts to meet the goal. A Contractor must provide justification if it rejects bids, quotes, or proposals from properly certified, qualified DBE firms.

In order to fulfill a DBE goal, the firms utilized as DBE Sub-consultants/Subcontractors must be certified as DBEs by Mn/DOT's Office of Civil Rights prior to the Proposal submission. The Minnesota Unified Certification Program (Mn/UCP) Disadvantaged Business Enterprise (DBE) directory contains the names and addresses of all firms that are certified to perform the type of work the Contractor is proposing to subcontract. The DBE Directory can be found at the following website:

http://www.dot.state.mn.us/eeocm/eeocmdoc/dbe_directory.pdf

The Apparent Successful Proposer (Contractor) must submit the following documents to the “Good Faith Efforts Review Committee, in Mn/DOT’s Office of Civil Rights.

1. Certificate of Good Faith Efforts - attached herein as page 9
2. Bidders List - attached herein as page 10
3. Good Faith Efforts Affidavit – attached herein as page 12
4. Exhibit A Forms – attached herein as page 7
5. Supporting Documentation to Verify Good Faith Efforts

The Apparent successful proposer must submit information on the attached **Certificate of Good Faith Efforts** listing all of the DBE and non-DBE firms (including sub-consultants, subcontractors, service providers and suppliers) from whom it solicited quotes to provide work and/or supplies for the project.

The Apparent successful proposer must also submit a completed **Bidders List**, which must include information on: (1) all DBE and non-DBE firms that submitted a bid/quote for the project; and (2) the proposed firms to be used on the project as subcontractors, service providers and suppliers. The Apparent successful proposer must submit a completed Bidders List form even if the company's list of proposed subcontractors, service providers and suppliers and supporting documentation (Exhibit A forms) includes enough participation to meet the contract-specific goal.

Additionally, a completed **Good Faith Efforts Affidavit** must be submitted regardless of whether or not the Apparent successful proposer has indicated on its list of proposed subcontractors, service providers and suppliers sufficient participation to meet the contract-specific goal.

The Apparent successful proposer must submit completed **Exhibit A** forms for each DBE firm it proposes to utilize on the project, along with copies of the signed agreements and/or affidavits and/or letters of intent committing themselves to the use of the proposed DBE firms for at least the percentage submitted on the Exhibit A forms. See page 7 of the DBE Consultant Contracts Special Provisions herein for additional information on completing the Exhibit A form.

The Apparent successful proposer must also submit additional information, which supports its good faith efforts such as those typical Good Faith Efforts listed on pages (3-4) of these DBE Special Provisions as well as summaries of the bidder's discussions and/or solicitation efforts of DBE firms (along with the firm names, addresses and contact persons). This information can include but is not limited to copies of solicitation letters and/or faxes to DBE firms.

FAILURE TO SUBMIT DOCUMENTATION

Failure of the Apparent successful proposer to submit the Certificate of Good Faith Efforts, the Bidders List, Exhibit A forms, Affidavit of Good Faith Efforts and supporting documentation **within three (3) working days** from the time of notification by Mn/DOT may result in the rejection of the bid and forfeiture of their proposal guaranty.

DBE CONTRACTUAL GOAL

The DBE goal on this contract is ____ percent (%).

The goal may be attained by means of:

1. A sub-consultant/subcontract agreement or affidavit with a DBE that is certified by the Minnesota Unified Certification Program (Mn/UCP);
2. An equipment lease agreement with a Mn/UCP-certified DBE;
3. A joint venture with a Mn/UCP-certified DBE. This agreement must be approved by the Mn/DOT Office of Civil Rights prior to proposal submission;
4. A purchase agreement with a Mn/DOT certified DBE supplier (sixty percent of the supplier's contracted amount will be credited toward the DBE goal); or
5. Other services pre-approved by the Mn/DOT Office of Civil Rights.

The Contractor shall make every reasonable effort to subcontract work to DBEs through good faith negotiations and/or solicitations in advance of the date specified for the opening of bids.

The Contractor shall indicate at the time of proposal submission their DBE commitment (which may be different from the goal indicated in this proposal) that they intend to subcontract to DBEs. A Contractor who fails to indicate a DBE commitment on the Goal Certification form must fulfill the "total goal" indicated in this proposal. See the Disadvantaged Business Enterprises (DBE) Certification form enclosed in this Request for Proposals (RFP).

EVALUATION OF GOOD FAITH EFFORTS

If the Apparent successful proposer has a DBE commitment that indicates they will accomplish none or only a portion of the Disadvantaged Business Enterprise (DBE) goal, they must demonstrate good faith efforts in attempting to meet that goal. Mn/DOT's Good Faith Efforts Review Committee shall review all "good faith efforts" documents submitted, and any amendments, and make a recommendation to the Director of Civil Rights. If the apparent successful proposer fails to meet the Good Faith Effort, as noted in this document, the Good Faith Efforts Review Committee will recommend to the Director of EEO that the Good Faith Effort be rejected. The Director will make the final decision if the Good Faith Efforts are to be rejected.

The proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation. The DBE Liaison Officer will make the final determination on whether a Contractor made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 C.F.R. §26.53, and Appendix A thereto. Compliance will be determined on a case-by-case basis, based on a review of documentation of the following general types of activities:

1. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal/pre-bid meetings, advertising and /or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Apparent successful proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Apparent successful proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up on the initial solicitations;
2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Apparent successful proposer might otherwise prefer to perform these work items with its own forces;
3. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;
4. Negotiating in good faith with interested DBEs. The Apparent successful proposer has the responsibility to make a portion of the work available to DBE Sub-consultants, Subcontractors and Suppliers and to select those portions of the work or material needs consistent with the available DBE Sub-Consultants, Subcontractors and Suppliers so as to facilitate DBE participation. Evidence of such negotiations include the names, addresses, and telephone numbers of DBEs that were considered; a description of 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 DBEs to perform the work;
5. An Apparent successful proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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 DBEs is not in itself sufficient reason for an Apparent successful proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of the Apparent successful proposer to perform the work of a contract with its own organization does not relieve the Apparent successful proposer of the responsibility to make good faith efforts. The Apparent successful proposer is not, however, required to accept higher

- quotes from DBEs if the price difference is excessive or unreasonable;
6. Rejecting DBEs as being unqualified must be based on a thorough investigation of their capabilities and sound reasons for rejecting DBEs must be articulated. The Apparent successful proposer's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejection or non-solicitation of proposals/bids in the apparent successful proposer's efforts to meet the project goal;
 7. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Mn/DOT or apparent successful proposer;
 8. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services;
 9. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State and Federal offices of minority/women business assistance; and other organizations, as allowed on a case-by-case basis, to provide assistance in the recruitment and placement of DBEs; and
 10. The performance of other proposers in meeting the contract requirements. For example, when the apparent successful proposer fails to meet the contract goal, but others meet it, the question may be reasonably raised as to whether, with additional reasonable efforts; the apparent successful proposer could have met the goal. If the Apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, this may be viewed, in conjunction with other factors, as evidence of the Apparent successful proposer having made good faith efforts.

The Apparent successful proposer shall submit signed agreement(s) and/or affidavit(s) committing themselves to the use of Disadvantaged Business Enterprises (DBEs) for at least the percentage submitted with the bid proposal within 3 working days from the time they are notified, by Mn/DOT and/or the delegated contracting authority that they are the Apparent successful proposer.

All DBE sub-consultant/subcontract agreement(s) including Purchase Order/Purchase Agreement or affidavit(s) must be accompanied by a completed Description of Work form, which is identified as "Exhibit A," a copy of which is attached hereto. This information is to be submitted to the Mn/DOT Office of EEO Contract Management within the allowed three (3) working days from receipt of notification of being the Apparent successful proposer, with the DBE subcontract agreement(s) and/or affidavit(s). Failure to submit a completed Exhibit A form with each DBE signed agreement(s) and/or affidavit(s) within the 3-day working day period or any allowed extension will result in the rejection of the proposal and the forfeiture of the proposal guaranty.

If the Director of Mn/DOT's Office of Civil Rights determines that adequate good faith efforts have not been demonstrated, the apparent successful proposer will be recommended for administrative reconsideration. The rejected proposer will not be approved as a subcontractor or material supplier with the proposer who is ultimately awarded the contract.

FAILURE TO FULFILL DBE COMMITMENT

Where it appears that the prime Contractor is failing to fulfill the Disadvantaged Business Enterprise subcontracting commitments made, sanctions for noncompliance may be invoked which include, but are not limited to, Mn/DOT withholding of progress payments and deducting from the contract proceeds as liquidated damages and not as a penalty, a sum equal to the portion of the DBE commitment not fulfilled.

Where the Contractor fails to fulfill the full amount of contracts executed with DBE firms, as required by this contract through no fault of the DBE firms, Mn/DOT will deduct from the contract proceeds, as liquidated damages and not as a penalty, a sum equal to the portion of the DBE goal which has not been met. However,

if Mn/DOT reduces the quantity of work subcontracted to the DBE, this provision does not apply.

The provisions of Mn/DOT 1302 are modified to the extent that any proposer failing to perform any or all of the responsibilities contained herein may constitute grounds for the Commissioner of Transportation to declare the proposer (non-responsive) with respect to future contracts.

PROMPT PAYMENT

The Contractor agrees to pay each Subcontractor/Subconsultant under this Contract within ten days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractors. The Contractor must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The Contractor agrees further to return retainage payments to each subcontractor within ten days after the sub-consultant/subcontractor's work is satisfactorily completed. This clause applies to both DBE and non-DBE sub-consultants/subcontractors. Any Contractor making payments to subcontractors must complete and submit the attached Contractor Payment form.

DBE REPLACEMENT

The Contractor shall make good faith efforts, to the satisfaction of the Mn/DOT Office of Civil Rights, to replace Disadvantaged Business Enterprise sub-consultants/subcontractors who are unable to perform successfully with another Disadvantaged Business Enterprise, as applicable. Mn/DOT's Office of Civil Rights shall approve all substitutions of sub-consultants/subcontractors during the contract performance in order to ensure the substitute firms are eligible DBEs.

Once a Contractor submits an affidavit, subcontract or other signed agreements, and an Exhibit "A" (which shall include the DBE business's name and contract amount, and the type of work), the DBE business cannot be substituted by another DBE business for any reason until the following occurs:

1. Mn/DOT's Office of Civil Rights receives a letter requesting approval of the substitution, including the reasons for the substitution; and,
2. Mn/DOT's Office of Civil Rights approves the substitution.

Mn/DOT staff will use all available means to assist the Contractor, when requested, in replacing DBEs. This assistance may include but is not limited to:

1. Providing the Contractor with information regarding other DBE availability.
2. Providing the Contractor with assistance in locating available DBEs.

AWARD OF CONTRACT

If all other contract requirements are met as to the awarding of the contract, the contract will be awarded to the selected proposer who submits all good faith efforts documentation and either meets the DBE goal or demonstrates Good Faith Efforts, as defined above.

The apparent successful proposer shall be notified by Mn/DOT that it is the Apparent successful proposer on the project. The Apparent successful proposer shall submit signed agreement(s) and/or affidavit(s) committing themselves to the use of Disadvantaged Business Enterprises (DBEs) for at least the percentage submitted with the bid proposal within three (3) working days of notification.

All DBE subcontract agreement(s) including Proposals or Purchase Order/Purchase Agreement or affidavit(s) must be accompanied by a completed description of work form, which is identified as "Exhibit A," a copy of which is attached hereto. This information is to be submitted to the Mn/DOT Office of Civil Rights within the allowed three (3) working days from receipt of notification of being the Apparent successful proposer, with the DBE subcontract agreement(s) and/or affidavit(s). Failure to submit a completed Exhibit A form with each DBE signed agreement(s) and/or affidavit(s) within the 3-day working day period or any allowed extension will result in the rejection of the bid and the forfeiture of the proposal guaranty.



**DBE Description of Work (Exhibit A) and Field Monitoring Report
(Consultant Contracts)**

A contract with the Prime Contractor cannot be awarded unless this form is submitted with a signed subcontract, purchase order or affidavit for every DBE. The DBE sub-consultant/subcontractor is to fill out all of the appropriate information and sign this form. PLEASE PRINT CLEARLY OR TYPE.

MUST BE COMPLETED BY THE DBE PRINCIPAL

Letting Date: _____ State Project Number: _____
Prime Contractor: _____ Phone #: _____
DBE Subcontractor: _____ Phone #: _____
DBE Principal Name: _____ Subcontract \$: _____

1. Did you bid and sign a subcontract agreement with the above-named prime consultant? _____
2. Are the items, quantities, and prices listed on the subcontract agreement/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 is other than what is listed in your DBE certification file please answer the following:
 - 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 _____
Other _____
 - 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 (DBE) 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.

Minnesota Department of Transportation
Office of Civil Rights

12. Please list all subcontracts that your firm will be performing during the current construction season including non-DBE work:
(Attach additional sheet if necessary.)

	Project Number	Prime Contractor	Project Location	# of Working Days
1.				
2.				
3.				
4.				

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).

DBE Company: _____

DBE Principal: _____
Signature
Title
Date

TO BE COMPLETED BY Mn/DOT OFFICE OF CIVIL RIGHTS STAFF PERSON

Project Number: _____ Phone: _____

Mn/DOT EEO Staff Person: _____ District #: _____

Project Engineer: _____ On-site Phone #: _____

Office Phone #: _____

**TO BE COMPLETED BY PROJECT ENGINEER WHEN THE DBE'S
PORTION OF WORK IS 1/3 TO 1/2 COMPLETED**

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

IF YOU HAVE CHECKED "NO" TO ANY OF THE ABOVE QUESTIONS OR HAVE ANY OTHER COMMENTS, IT IS IMPORTANT THAT YOU CONTACT THE Mn/DOT OFFICE OF EEO CONTRACT MANAGEMENT STAFF PERSON ASSIGNED TO THIS PROJECT.

Project Engineer: _____ Date: _____



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

**CERTIFICATE OF GOOD FAITH EFFORTS
(Consultant Contracts)**

State Project #: _____

Prime Contractor _____ Contract Amount _____ Goal _____

Total DBE Commitment _____ (_____ %)

SOLICITATION OF ALL SUBCONSULTANTS, SUBCONTRACTORS, SUPPLIERS AND SERVICE PROVIDERS

Subconsultant/ (or Subcontractor/Supplier/Service provider)	DBE?		Phone	Dates, Method of Contact		Description of Work	Dollar Amount of Proposal / Quote
	Yes	No		Letter	Phone		
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

(Make additional copies of this form as necessary)



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

**BIDDER'S LIST
(Consultant Contracts)**

State Project #: _____

Prime Contractor _____

Contract Amount _____

Goal _____

Total DBE Commitment _____ (_____ %)

List all comparative quotes of participants performing on the project and participants that bid, including DBEs and non-DBEs.
Include Subconsultants, Subcontractors, Suppliers & Service providers.

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

* Please indicate with an asterisk (*) or check mark (√) which subconsultants, subcontractors, suppliers and 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 DBE status, are required to complete and submit this form to Mn/DOT's Office of Civil Rights until final payment is made. 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 Office of Civil Rights and one to the project engineer, no later than ten (10) days after receiving payment from Mn/DOT.

Contractor's Name, Address, Telephone Number		Original Contract Amount	Committed DBE %	Actual DBE % to Date
Name of Subcontractor/Supplier	DBE? (Check if Yes)	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)

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

GOOD FAITH EFFORTS AFFIDAVIT

STATE OF MINNESOTA
COUNTY OF _____

I, _____ hereby acknowledge that I am the _____
of _____, that has been identified as the apparent
successful proposer of the State Project.

S.P. _____.

The undersigned, having been first duly sworn, says that the information given in the above certificate is true and correct to the best of his or her knowledge and belief.

Signed _____
Consultant or authorized representative

Subscribed and sworn to before me

This _____ day of _____, 200_____

Notary Public

My commission expires _____, 200_____