MN/DOT'S DISADVANTAGED BUSINESS ENTERPRISE & WORKFORCE COLLABORATIVE

FEBRUARY 1, 2011

REPORT TO THE LEGISLATURE

AS REQUIRED BY MINNESOTA STATUTES 2010, SECTION 174.186, SUBD. 2

MNCOLLABORATIVE.ORG

Table of Contents

Letter from Project Team Chairs 3

Letter from the Commissioner 4

Collaborative Mission 6

Collaborative Members 7

Executive Summary 10

Collaborative History 18

Project Team Reports

- OJT Program 21
- Pilot Project 23
- Mentor/Protégé Program 24
- DBE Program 26
- Results Transparency 29
- Civil Rights Training 31
- Coordinated Access Point 32
- OJT Retention 34
- TGB Program 35
- Veteran Preference Program 36
- Working Capital Loan Fund 37

Recommendations 39

Appendices

- **Appendix A**: MN Statutes 2010, 174.186 DBE Collaborative 45
- **Appendix B**: Proposed TGB Program Reinstatement Legislation 46
- **Appendix C**: Transportation Department Data Legislation 50
- **Appendix D**: Working Capital Loan Fund Legislation 52
- **Appendix E**: Office of Civil Rights Organizational Chart 53
- **Appendix F**: DBE Special Provision Contractor Letter 54
- **Appendix G**: Sample Workforce Special Provision Enforcement Letter 62

Senator Joe Gimse
Senator D. Scott Dibble
Representative Michael Beard
Representative Frank Hornstein
State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

RE: Report on the work of Mn/DOT's Disadvantaged Business Enterprise & Workforce Collaborative

February 1, 2011

Dear Chairs and Ranking Minority Members:

We, the undersigned Project Team Chairs, on behalf of the members of the Disadvantaged Business Enterprise & Workforce Collaborative submit the enclosed report on our work, as required by statute (Minnesota Statutes 2010, section 174.186).

When we convened in December 2008, we began with little trust among the eight major stakeholder groups. We started at cross purposes and initially struggled with competing interests and agendas. But, we persevered. Today, we are building trust by honestly exploring and understanding each other's needs. We are building ownership in our shared work, finding common ground, forging new partnerships and strengthening existing alliances. We share a common mission: "To have the contractors and workforce participation within the Minnesota transportation industry reflect the demographics of the State of Minnesota."

Collaborative goals have transcended regional boundaries, party affiliations and economic status as the touchstones of our work together. They include:

- To put our workers to work.
- To ensure our businesses are competitive.
- To guarantee that both of these groups have all the opportunities they need to be successful.

We still have a long way to go, but some initial successes suggest we are heading in the right direction. This is difficult – and groundbreaking – work. We are committed to this transformational process in the long-term; we pledge to hold ourselves and each other accountable for real, sustainable solutions and results.

We look forward to working in partnership with Mn/DOT and with the Minnesota State Legislature to make transformational and sustainable change in the state transportation workforce and in the participation of disadvantaged businesses on state and federal highway and bridge projects. We believe that we have the potential to set a new standard for how Minnesota addresses disparities in contracting and workforce. Our intention is to serve as a model for other Transportation Departments across the nation.

We urge you to attend to the enclosed report and to support the three pieces of legislation that follow.

Sincerely,

Phil Barnes
Barb Christensen
Mary DesJarlais
Alan Duff
Tim Farrell
Dianne Holte
Tim Kennedy
Hyon Kim
Louis King
Dan Sprague
Alex Tittle
Robert Woods
Tim Worke

Minnesota Department of Transportation
395 John Ireland Boulevard
Saint Paul, MN 55155

February 1, 2011

Senator Joe Gimse
Senator D. Scott Dibble
Representative Michael Beard
Representative Frank Hornstein
State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, Minnesota 55155

RE: Report on the work of Mn/DOT's DBE & Workforce Collaborative

Dear Chairs and Ranking Minority Members:

The Disadvantaged Business Enterprise & Workforce Collaborative and the Minnesota Department of Transportation have completed the enclosed report on the work of Mn/DOT's Disadvantaged Business Enterprise & Workforce Collaborative in response to the statute passed by the Minnesota State Legislature (Minnesota Statutes 2010, section 174.186).

Mn/DOT is committed to transformational change in the areas of workforce development and DBE participation in transportation. Just over two years ago, Mn/DOT and representatives of its key stakeholders across the state began working toward the goal of making Minnesota a state where the representation of diverse businesses and workforce in the transportation industry more closely reflects the state's changing demographics.

It is important to note that Mn/DOT is a member of the Collaborative, but is just one voice of many sitting at the table. The accomplishments and recommendations of the Collaborative included in this report are a result of the new and innovative partnerships entered into by the diverse members of the Collaborative.

An Equal Opportunity Employer

In the past 12 months, the Collaborative has made enormous progress in finding common ground. Stakeholders have formed partnerships and made significant improvement in workforce development and disadvantaged business enterprise participation in the Minnesota transportation industry. The recommendations and opportunities identified in this report by the Collaborative are squarely aligned with Mn/DOT's strategic initiatives and will strengthen the department and the work that we do for the people of Minnesota.

While the Collaborative has started to move in the right direction, we understand that our journey has just begun. By increasing our transparency, sharing relevant data, continuing assessment and holding one another accountable for progress toward our goal, the Collaborative will sustain and accelerate the momentum created over the last year.

I welcome your thoughts about this report and our progress with the Collaborative. For specific questions about the Collaborative's activities, please contact Emma Corrie, Disadvantaged Business Enterprise & Workforce Collaborative Project Manager at (651) 366-3327 or emma.corrie@state.mn.us. For specific questions about the implementation of recommendations, please contact Mary Prescott, Director of the Mn/DOT Office of Civil Rights, at (651) 366-3150 or mary.prescott@state.mn.us.

Sincerely,

Thomas K. Sorel
Commissioner

An Equal Opportunity Employer

Collaborative Mission

Mission

To have the contractors and workforce participation within the Minnesota transportation industry reflect the demographics of the State of Minnesota.

Background

Mn/DOT's DBE & Workforce Collaborative is a group of Mn/DOT employees and various external stakeholders committed to delivering transformational and sustainable change to Mn/DOT's external civil rights program that will benefit all stakeholders, including the public. The collaborative is one of Mn/DOT's 12 flagship initiatives with a focus on implementing sustainable solutions that benefit all and are developed with input from the stakeholders impacted.

Project Teams

Eleven project teams, with representation from the various stakeholder groups, are currently working on developing sustainable solutions that balance competing interests and improve DBE & diverse workforce participation on Mn/DOT projects.

Collaborative Members

Bernie Arseneau
Mn/DOT

Brian Aske
Intl Union of Operating Engineers-Local 49

Philip Barnes
Mn/DOT

Dennis Behnke
Lunda Construction

Lou Anne Berg
J&L Steel and Electrical Services

Kathy Bique
Mn/DOT

Sue Blanchard
Safety Signs

Alan Boe
ColliSys

Eddie Boone
The OBAAT Group

Charlie Borene
Valley Paving

Maura Brown
The Alliance for Metropolitan Stability

Barb Christensen
Association of Women Contractors

Kim Collins
Mn/DOT

Lester Collins
Council on Black Minnesotans

Emma Corrie
Mn/DOT

Annastacia deCarrera
Mn/DOT

Mary DesJarlais
Minnesota AFL-CIO

Margaret Donahoe
The Transportation Alliance

Alan Duff
Duff Consulting, LLC

Tim Farrell
Isaiah

Jim Frisco
Falcon Communications Group, Inc.

Jason George
Intl Union of Operating Engineers-Local 49

Todd Goderstad
Ames Construction

Scott Gray
Minneapolis Urban League

Charles Groshens
Mn/DOT

Ron Hall
Knife River Corporation

Marcus Harcus
HIRE Minnesota

Abe Hassan
Mn/DOT

Stakeholder Groups

- DBE Contractors
- General and Sub-Contractors
- Workforce Developers / Training programs
- Unions
- Employment/ business advocates
- Non-union workforce and contractors
- Federal Highway Administration (FHWA)
- Minnesota Department of Transportation

"For Minnesota to move forward, all of our residents must share in the economic opportunities of our state. The work of the collaborative is focused on creating a sustainable workforce and business environment for Minnesota's future as an increasingly racially diverse community."

— Sarah Mullins

Isaiah

Martha Henrickson
Associated General Contractors of MN

Russell Hess
Laborers District Council of MN and ND

Dianne Holte
Holte Contracting, Inc.

Lyle H. Iron Moccasin
American Indian OIC

George Jacobson
MEDA

Tim Kennedy
MEDA

Tanya Kesti
Ames Construction

Hyon T. Kim
MN Best Enterprise Inc.

Louis King
Summit Academy OIC

Steve Kuntz
DEED Voc. Rehab. Services

Vanessa Levingston
Mn/DOT

Bruce Lillehei
ColliSys

Gary Lindblad
Intl Union of Operating Engineers-Local 49

Jessica Looman
Laborers District Council of MN and ND

Gelario Marlow
S & L Masonry

Stephanie Marlow
S & L Masonry

Matthew E. Marquis
Management Guidance, Inc.

Ronda Mathiowetz
Mathiowetz Construction Co.

Roger McBride
Ames Construction

Kenya McKnight
Northside Econ. Opportunity Network

George McMahon
International Brotherhood of Teamsters

Sarah Mullins
Isaiah

Tim Murphy
Upnorth-Vet

Mary Nestingen
Merrick Community Services

Tran Nhon
Rani Engineering

Ashanti Payne
Mn/DOT

Mary Prescott
Mn/DOT

John Quade
Knife River Corporation

Gary Quernemoen
DEED Veterans Program

Susan P. Rani
Rani Engineering

Barbara Raye
Center for Policy, Planning & Performance

Bruce Reihl
Lunda Construction Company

Kent Robbins
CPED City of Minneapolis

David Scott
FHWA Minnesota Division

Sheila Scott
MN Department of Human Rights

Dave Semerad
Associated General Contractors of MN

Jerry Siverson
C.S. McCrossan

Pastor Paul Slack
Isaiah

Dan Sprague
Minnesota State Colleges and Universities

DeAnn Stish
MN Utility Contractors Association

Lisa Tabor
CultureBrokers, LLC

Nick Thompson
Mn/DOT

Alex Tittle
Summit Academy OIC

Derrell Turner
FHWA Minnesota Division

Mary M. Walker
FHWA Minnesota Division

Art Weddington
Selby Area CDC

Alvin-o Williams
ao:consultum

Robert Woods
BRICK

Tim Worke
Associated General Contractors of MN

Jason Zins
Shafer Contracting Co.

"The Collaborative has mastered the balance between constructive discussion and action."
— Dan Sprague
Minnesota State Colleges and Univerities

Other Participants

Lisa Amman
Clifton Boyd
Mark Brinkman
Vincent Brown
Sinouane Chanthraphone
Yvonne Cheung-Ho
Tim Connolly
Richard Copeland
Ginny Crowson
Quadree Drakeford
Mike DeBuhr
Carolyn Deters
Mark Ellson
Rob Edberg
Mark Fisher
Richie Foldesi
Erroll Foster
Hector Garcia
Romeo Garcia
William George
Tanessa Greene
Denise Hals
Lu Hang
Sandy Hansen
Ilean Her
Phyllis Hill
Peter Johnson
Leo Jackson
Tom Kane
Tory Kielbasa
Keith Kramer
Jerry Kyser
Carlo Lachmansingh
Travis Lachmansingh
Deb Ledvina
Lynn Littlejohn
Dorothy Lovejoy
Mike Mackey
Brad Mattson
Harry Melander
Kathy Meyer
Melanie Miles
Ben Morrow
Fredrick Newell
Ravi Norman
Astrid Ollerenshaw
Erik Ortiz
Claudia Osterman
Troy Parker
Scott Peterson
Linda Pomeroy
Monica Potter
DuJuan Savage
Jay Schmitt
John Schwartz
Julie Skallman
Marvin Smith
David Stark
Dominic Warren
John Welle
Dale E. White
Kenneth White
Jan Williams
Kelly Webb

Executive Summary

"What began as a flagship initiative of Mn/DOT is now becoming a model collaborative effort that is creating transformational and sustainable change in the way we are delivering a safe and efficient transportation system for Minnesota. The result of the collaborative's work is a growing sense of trust among stakeholders, creating a stable foundation for future continued progress."

— Bernie Arseneau
Deputy Commissioner
Mn/DOT

Mn/DOT's Role

Mn/DOT convened the collaborative in December 2008 with a focus on transformational and sustainable change in its external civil rights program. Mn/DOT is a member of the collaborative, representing one of the eight stakeholder groups that comprise of the collaborative. Mn/DOT has assigned a Collaborative Project Manager to the group as well as its Office of Civil Rights staff who provide staff support on each of the 11 collaborative project teams.

Since the Federal Disadvantaged Business Enterprise (DBE) program was established in 1980, Mn/DOT has struggled to meet its own contracting goals. (Fig. 1) The share of federal highway dollars going to DBEs in 2009 was just 4 percent, far below the national goal of 10 percent. (Fig. 2)

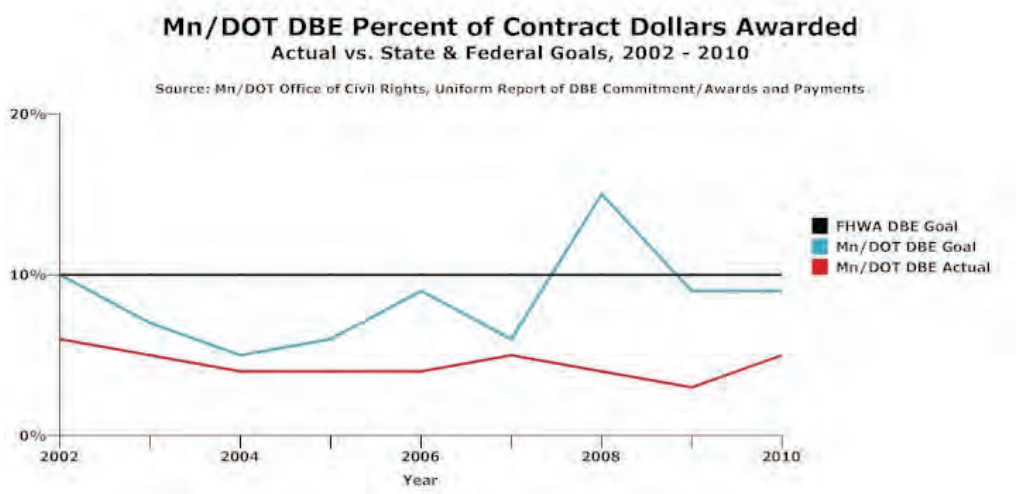


Fig. 1

In addition, Minnesota has struggled with having too few women and minority workers on highway projects. Minorities made up just 6.1 percent of the highway construction workforce in 2009; women just 3.3 percent.

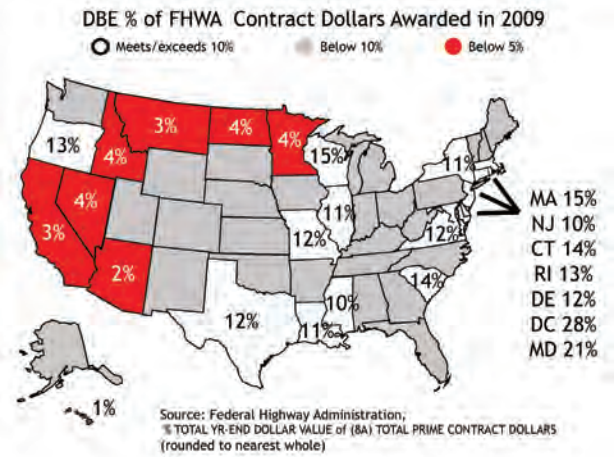


Fig. 2

In December 2008, answering the community's call for bold action, Mn/DOT formed the Disadvantaged Business Enterprise & Workforce Collaborative, bringing together representatives of eight broad stakeholder groups — general contractors, Disadvantaged Business Enterprise contractors, training organizations, unions, business/workforce advocates, non-union contractors/workforce, the Federal Highway Administration and Mn/DOT.

The group's charge: to develop, implement and evaluate ideas that help Mn/DOT "to have the contractors and workforce participation within the Minnesota transportation industry reflect the demographics of the State

of Minnesota."

This report of the Collaborative's work over the past two years, including recommendations and suggested legislation, has been prepared in response to Minnesota Statutes 2010, section 174.186.

COLLABORATIVE SUCCESSES

The work of the Collaborative has been challenging. Stakeholder groups began their work together with often-conflicting interests and a lack of trust. Through months of frank, open and honest discussions, the Collaborative has been able to agree on the enclosed conclusions and recommendations. In addition, a shared understanding of other stakeholder perspectives and interests has helped the Collaborative identify and support common areas for change and to agree to a shared accountability for results.

The strengths of the Collaborative approach include:

- **RELATIONSHIPS** – A focus on building relationships as an essential element for future partnerships; a common vision for success; and significant to Mn/DOT's ability to build and maintain public trust and confidence.
- **THREE 'A's for CHANGE** – A shared understanding of other stakeholder perspectives and interests has helped the collaborative identify three focus areas for change: Availability, Attitudes and Accountability.
- **SUCCESSES** – Eleven project team initiatives developed, owned and supported by collaborative members; initial successes achieved and ongoing success expected.
- **COMPREHENSIVE APPROACH** – The Office of Civil Rights has reorganized and hired new staff; Mn/DOT has streamlined its contracting process and strengthened interoffice relationships; Mn/DOT is implementing the Civil Rights Labor Management System, which offers increased transparency with data; increased federal and state funding to support capacity building (OJT & DBE) along with Mn/DOT's sustained commitment to the Collaborative have all played an important role in Mn/DOT's comprehensive approach to implementing transformational and sustainable change in its civil rights program.

SUSTAINABLE, TRANSFORMATIONAL ACTION

Eleven project teams, with representation from each of the stakeholder groups, are developing sustainable solutions that balance competing interests and improve DBE and diverse workforce participation on Mn/DOT projects. Project team/Office of Civil Rights solutions successfully implemented at Mn/DOT are listed in the following sections.

Commitment

Mn/DOT leadership is committed to the work of the collaborative and implementing the recommendations of the group in order to increase diverse workforce and DBE participation on Mn/DOT construction projects.

Mn/DOT has allocated resources to cover collaborative expenses like website maintenance; facilitator costs; communications costs; meeting expenses and staff time.

Mn/DOT and its Office of Civil Rights are committed to providing the data necessary to aid the work of the collaborative project teams and to help ensure transparency and accountability.

Workforce Progress

Mn/DOT's goal for placing new minority and women trainees on federally funded projects has been 70 for the past 5 years. In Federal Fiscal Year 2009, there were exactly 70 minority and women trainees placed on such projects. In 2010 there were 110 minority and women trainees placed on these projects. This includes 68 minority men and women and 42 caucasian women.

Workforce

- New On-the-Job Training Program special provision requires workforce data as condition of award. OJT program plans due at time of bid.
- Length of time that an individual can remain enrolled as a trainee was extended to mirror the hours needed to complete a Certified Apprenticeship Program.
- Reimbursement amount for hours worked on a federally funded project by trainees was increased.
- Qualitative and quantitative data being collected from 2010 construction season trainees with a focus on recruitment and retention of diverse candidates in the highway heavy industry.

OJT Trainee Data

October 1, 2009–September 30, 2010 (FFY 2010)

OJT Program	Number of Trainees			
Job Categories Craft	Non-Minority		Minority	
	Male	Female	Male	Female
Laborer	0	26	39	6
Operating Engineer	0	13	12	2
Pile Driver	0	0	1	0
Pipelayer	0	0	2	0
Truck Driver	0	2	3	0
Other Trades	1	1	3	0
Totals	1	42	60	8

Tabulation based upon Federal Fiscal Year 2010
Annual Goal: 70 OJT Placements
Total Trainees as of 9/30/09 = 111. Total Minorities (male & female) = 68 (61.2 %)
Total Females (minority & white) = 50 (45.05%)
Total Minority Females = 8 (7.2%) Non-Minority Males = 1 (0.9%)
Total Minority & Female OJT participation for FFY 2010 = 110, or 99.1%

Disadvantaged Business Enterprise

Mn/DOT has developed a targeted approach focusing on three areas to increase DBE participation in the delivery of federally funded projects:

- DBE Business Development Program services.
- Improved DBE Good Faith Efforts enforcement to ensure DBE businesses have equal access to work on Mn/DOT projects.

- Targeted outreach efforts to grow pool of available DBEs.
- New coordinated Mentor/Protégé Program for DBEs working on Mn/DOT, Met Council and Metropolitan Airports Commission projects.
- New DBE special provision, with a focus on increased accountability, implemented and training delivered.
- Working Capital Loan Fund with seed funding implemented for DBEs.
- FHWA-sponsored Civil Rights Program Overview Training provided to collaborative members.
- Proposed legislation developed for upcoming 2011 session that will enable Mn/DOT to reinstate its Targeted Group Business Program for state-funded projects.
- Enhanced DBE training and supportive services through federal grants.
- Total DBE contract awards (prime and subcontractors) increased from 3.6 percent in FFY 2009 to 5.6 percent in FFY 2010. This was a significant change, but we still have a long way to go in achieving Minnesota's 8.75 percent DBE goal and the 10 percent federal aspirational goal.

"MNDOT was the catalyst to bring multiple stakeholders with potentially competing interests to the table to find common ground so all voices were heard and an action plan developed. Individuals with disabilities were for the first time acknowledged as a stakeholder group and part of the workforce solution."

— Steve Kuntz

DEED, Voc Rehab Services

DBE Annual Goal FFY 2010

DBE Bidding History

Federal Fiscal Year	Total # of DBES Certified	DBES Eligible to do MN/DOT work	# of DBES Biddding on MN/DOT work	% of DBES Bidding
2004	**314**	**274**	**59** (5 Primes)	**21.5%**
2005	**330**	**273**	**67** (5 Primes)	**24.5%**
2006	**342**	**241**	**NERA did not calculate**	
2007	**359**	**244**	**65** (5 Primes)	**26.6%**
2008	**373**	**221**	**62** (4 Primes)	**28.1%**
2009	**408**	**233**	**89** (5 Primes)	**38.19%**

Workforce Development and Contract Compliance

PROGRAM CHANGES:

- Beginning June 5, 2009, On-the-Job Training Program Plans are due at time of bid – On federally funded contracts that contain the OJT requirement, all bidders are required to submit an OJT Plan and include what trades they will utilize, which subcontractors will be assisting them, the number of individuals they will utilize and the hours those individuals will work on the project, the recruitment sources they will

Transformational Changes

Now, if a contractor employs a trainee who is a graduate of a Mn/DOT OJT Supportive Services Program, it may be reimbursed $5 for each hour worked by these individuals on federally funded Mn/DOT projects. If that contractor provides a mentor for that same trainee, then it will be reimbursed an additional $5 for a maximum total of $10 per hour worked by individuals recruited from Mn/DOT OJT SS Programs.

utilize and a description of their training activities. Failure to submit this data will result in a bid determined to be non-responsive.

- March 26, 2010, the length of time that an individual can remain enrolled as a trainee was extended to mirror the hours needed to complete a Certified Apprenticeship Program – There are specific requirements in place that determine the amount of OJT hours required for an individual to complete a Certified Apprenticeship Program. Depending upon the trade, the hours can range anywhere from 2,000 to 8,000. This step was taken to promote retention of minority and women apprentice members and trainees and the development of careers vs. a job on a project for a few hundred hours.
- On July 23, 2010, a new Special Provision was incorporated that applies to projects where the apparent low bid is in excess of $5 million – On applicable projects the Apparent Low Bidder has five business days to submit project and company workforce data to the Office of Civil Rights. The required data includes: the workforce statistics of the ALB during the previous 12-month period, a projection of minority and women employment hours they expect to achieve for the entire project (including subs), a contingency plan if they determine that their current workforce levels are insufficient to achieve the stated project goals and the recruitment sources they will utilize to recruit minority and women candidates. This requirement is a condition of award and must be received within the specified time frame by OCR.
- In August 2010 the reimbursement for hours worked on a federally funded project by trainees was increased – previous amounts were between $1 and $3 per hour. Now, if a contractor employs a trainee who is a graduate of a Mn/DOT OJT Supportive Services (OJT SS) Program, it may be reimbursed $5 for each hour worked by these individuals on federally funded Mn/DOT projects. If that contractor provides a mentor for that same trainee, then it will be reimbursed an additional $5 for a maximum total of $10 per hour worked by individuals recruited from Mn/DOT OJT SS Programs. Mn/DOT has dedicated more than $900,000 in Federal grants to contract with multiple organizations as part of its OJT SS Program. DEED, Merrick Community Services, Minneapolis Urban League and Summit Academy will provide training, placement and retention services for minority and women candidates seeking opportunities in the highway heavy industry.
- Mn/DOT has committed $5.5 million over the next five years (through 2014) for workforce development and other Collaborative initiatives.

COMPLIANCE ACTIVITIES

Contractors holding contracts for the top 10 projects in the metro area

and who were not meeting their goals were sent a letter from the OCR Director that requested a plan for meeting their goals, the recruitment sources they will utilize and their projections for what they will achieve in terms of minority and women employment. Meetings have been scheduled with these contractors and in most cases these meetings have already taken place.

Highway Construction Workforce

	2010	2009	2008
Total Employment	**2,251**	**1,873**	**2,603**
Total Minorities	168	114	159
Total Women	**87**	**62**	**102**
% Minorities	7.5	6.1	6.1
% Women	**3.9**	**3.3**	**3.9**

PERFORMANCE INDICATORS

Mn/DOT's goal for placing new minority and women trainees on federally funded projects has been 70 for the past 5 years. In Federal Fiscal Year (FFY) 2009 there were exactly 70 minority and women trainees placed on such projects. As of August 25, 2010 there have been 87 minority and women trainees placed on these projects. This includes 61 minority men and women and 26 white women.

There are four projects from the metro area top 10 list that had construction activity going on at the same point in time last season. All four have seen an increase in minority participation in 2010 and three of the four have seen an increase in women participation:

- **SP 1985-0132, TH 494 between Hardman and Maxwell Ave., Lunda Construction Co**: $60,073,361.79 project. As of July 18, 2009, 7.3 percent minority and 1.4 percent women employment; as of July 17, 2010, 9.1 percent minority and 1.9 percent women employment.
- **SP 2750-0057, TH 169 from 79th Ave. to 89th Ave., CS McCrossan**: $49,983,757 project. As of July 18, 2009 3.1 percent minority and 6.6 percent women employment; as of July 17, 2010 5.7 percent minority and 7.0 percent women employment.
- **SP 2782-0281, Crosstown TH 35W from 66th St. to 42nd St., Ames/Lunda/Shafer (JV)**: $288,306,281.77 project. As of July 18, 2009 5.6 percent minority and 3.2 percent women employment; as of July 17, 2010 7.5 percent minority and 3.3 percent women employment.

Workforce Progress

On the Crosstown project as of July 18, 2009, there was 6.6 percent minority employment; as of July 17, 2010, that had grown to 8.5 percent minority employment.

DBE Progress

Total DBE contract awards (primes and subs) increased from 3.6% in FFY 2009 to 5.6% in FFY 2010.

DBE subcontractor Awards increased from 9.2% to 15.8% from October 2009 through March 2010 and hit 13.2% overall for the year.

- **SP 2782-0296, TH 35W at 35th and 39th St., Ames Construction Inc**: $13,544,475.88 project. As of July 18, 2009 6.6 percent minority employment; as of July 17, 2010 8.5 percent minority employment.

DBE and Business Development Program Progress

DBE PARTICIPATION PROGRESS DATA (FIRST HALF OF FEDERAL FISCAL YEAR 2010):

- Increase in DBE Subcontractor awards from 9.2 to 15.8 percent.
- Increase in total DBE contract awards (prime and contractors) from 3.6 percent in the second half of 2009 to 5.6 percent (current Minnesota requested goal is 8.75 percent).

NEW MN/DOT DBE SPECIAL PROVISION FOR STATE/COUNTY/CITY FEDERALLY FUNDED CONSTRUCTION PROJECTS:

- Promotes earlier involvement in order to maximize DBE participation.
- Increases the number of contractors meeting and exceeding their DBE commitment at the time of bid letting.
- Shifts good faith efforts to before bid submittal.

DBE Business Development

- The goal of the Collaborative was to make 10 Mentor/Protégé pairs by the end of 2010; 11 M/P pairs had been approved by Minnesota Unified Certification Program and 27 Protégé applications were being paired with mentors.
- Working Capital Loan Fund Project Team has developed criteria and a process. Mn/DOT has secured the initial program investment. Metropolitan Economic Development Association has been selected as the program administrator.
- The Office of Civil Rights submitted a proposal to U.S. DOT for $1.5 million to enhance DBE and supportive services programs with input from stakeholders. A grant of $883,718 was awarded for those programs.
- Targeted Group Business Program – Introducing new Legislation in 2011. Developed a process and timeline to develop a defensible TGB program to be administrated by Mn/DOT on state-funded construction projects. Utilization of business development opportunities to grow ready, willing and able highway heavy companies to be certified by the Minnesota Department of Administration.
- Coordinated Access Point – Developed an action proposal, timeline, roles and responsibilities and budget for a single point of entry for major certifications; creation of a data transfer bridge to database, extends existing BidXpress, creates a plan repository, and designs a coordinated UCP advertising campaign to increase the number and variety of certified and bidding DBEs. One of the issues we are trying

to address: Mn/DOT has more than 300 certified DBEs, but only 94 are bidding on our projects.

- DBE Special Provision implemented Oct. 22, 2010. Two lettings have been completed since implementation. In those lettings there were no 0 percent commitments; DBE participation was at or near goals.
- OCR received commitment to utilize a Metro Area project — I-694/US10/Snelling Avenue reconstruction — as a pilot to explore a new approach to project delivery that proactively increases participation.

NEXT STEPS

- Measures for Success – OCR/Collaborative Project Teams are developing specific measures for ongoing success of Collaborative initiatives like the Working Capital Loan Fund; Mentor Protégé program; DBE special provision; OJT training and retention; and the veterans preference program.
- Ongoing Strategic Communications – Consultants hired by Mn/DOT are developing a plan to equip Collaborative members to share the work done with their broader stakeholder groups, including the Legislature and internally at Mn/DOT. Strategic communication goals, target audiences and an implementation plan are to be finalized in February 2011. Continued strong communications and increased transparency will be integral to the long-term success of the Collaborative's initiatives.
- Mn/DOT and Collaborative members will be advocating for adoption of the proposed legislation and recommendations listed in the Conclusions/Next Steps/Recommendations section of this report (Pages 39-44)

WHAT WE NEED FROM THE LEGISLATURE

We, the members of the DBE & Workforce Collaborative are committed to this process over the long-term and pledge to work closely with the Minnesota Legislature to ensure that the change process that has begun is sustained. We share a goal: That the contractor and workforce participation on state transportation projects mirror the state's changing demographics. To help us to reach this goal, we ask that you:

- Continue to hold Mn/DOT and the Collaborative accountable for results.
- Ask for annual reports of our progress, including data on workforce and DBE participation.
- Hold hearings on DBE and workforce participation at least once a session.
- Provide additional funding for the programs outlined in this report, including the Working Capital Loan Fund and establishment of a Coordinated Access Point for Recruiting.
- Sponsor and/or support the legislation submitted by Mn/DOT and endorsed by the Collaborative.

On The Web

More information on the Collaborative is available at mncollaborative.org

Contacts

Emma Corrie
Project Manager
651-366-3327
emma.corrie@state.mn.us

Mary Prescott
Director,
Office of Civil Rights
651-366-3150
mary.prescott@state.mn.us

"The Collaborative greatly enhances our ability to be successful by holding us accountable and helping us focus on the areas needing transformational changes. The Collaborative allows us to have our programs and efforts fully integrated into the communities in which we serve."

— Mary Prescott
Director, Mn/DOT Office of Civil Rights

Collaborative History

Mn/DOT updated its Strategic Vision in December 2008 under Commissioner Thomas Sorel, outlining five Mn/DOT Strategic Directions of Safety, Mobility, Innovation, Leadership and Transparency.

These Strategic Directions are integrated into Mn/DOT's day-to-day operations and highlighted through 12 flagship initiatives. The Disadvantaged Business Enterprise (DBE) & Workforce Collaborative is one of Mn/DOT's 12 flagship initiatives and focuses on the strategic direction of transparency — building public trust through collaborative partnerships.

The Minnesota Department of Transportation has struggled for years with having too few women and minority workers on highway projects. DBEs' share of federal highway dollars in 2009 was just 4 percent, far below the national goal of 10 percent. Minorities made up just 6.1 percent of the highway construction workforce in 2009; women just 3.3 percent.

The Collaborative, convened by Mn/DOT in December 2008, is a group of external stakeholders and Mn/DOT employees committed to delivering transformational and sustainable change to Mn/DOT's external civil rights program. Mn/DOT leadership and the Office of Civil Rights are committed to working with stakeholders, including general contractors, DBEs, community/business advocates, unions, non-union contractors and the FHWA in identifying and implementing innovative solutions to increase participation of DBEs and diverse workers on Mn/DOT projects.

The Collaborative's first year was difficult as stakeholders confronted differing visions for state transportation projects, competing interests and a lack of trust. Tensions in the community, where people felt that little or no progress was being made on DBE and workforce goals, led to protests in the summer of 2009. The Collaborative's monthly meetings grew heated at times, and were suspended for a time as Mn/DOT and the stakeholders considered whether the Collaborative would be able to finish its tasks. At this time, Mn/DOT made two appointments to the Collaborative: A neutral third party hired as a facilitator and a Mn/DOT employee to act as project manager. The facilitator hired by Mn/DOT worked with the parties, who eventually returned to the table and worked through their differences.

During the 2010 Legislative Session, the Minnesota Legislature passed 174.186 Disadvantaged Business Enterprise Collaborative, directing Mn/DOT to convene the Collaborative and to report back on its progress during the 2011 Legislative Session.

The members of the Collaborative, working with the facilitator and the project manager, built trust and a sense of shared ownership in their work

by focusing on common goals and by listening to each other's needs respectfully and in good faith. In April 2010, the Collaborative's members agreed to a set of shared norms for conduct at their meetings.

As you will see throughout this report, the Collaborative and its Project Teams have begun to make progress in addressing historical workforce and DBE disparities and are committed to the long-term sustainability of these changes and to shared accountability.

Office of Civil Rights Restructuring

In May 2009, Mn/DOT's internal Office of Civil Rights was restructured with input from Disadvantaged Business Enterprises, Community Based Organizations, DBE and Workforce Development Advisory Team Members, Association of General Contractors, Sub Contractors, Unions, Department of Human Rights, Affirmative Action Office, Individual Employee Meetings, Construction Project Personnel and an extensive review of other States Organizational Structures. [See Appendix E for a new OCR organizational chart]

The restructuring was carried out with the end goal in mind: Business development, better DBE compliance and workforce development. OCR is positioned to support the implementation of the Collaborative's recommendations. The restructuring was a signal of Mn/DOT's commitment to carrying out the work of the Collaborative.

The DBE Section now has in place a new supervisor and is fully staffed as of October 30, 2010. One DBE Specialist is focused on the north region of the state, one the south, two in the Metro Region, and one on the state's new Veteran's Preference Program and development of a new Targeted Group Business Program. The Business Development Section has been formed and a new supervisor hired. Staff includes a Business Development Specialist, Contract and Grants Administrator, Program Outreach Coordinator, and Civil Rights and Labor Management Systems and Data Administrator. A great portion of this structure includes outsourcing all federal grants and Mn/DOT funds to community organizations/private businesses.

New Structure

OCR is positioned to support the implementation of the Collaborative's recommendations. The restructuring highlights Mn/DOT's commitment to:

- DBE compliance
- EEO/ Workforce compliance
- Business development

DBE & Workforce Collaborative History

HISTORICAL BACKGROUND

1960 1970 1980 1990 2000 2010

1964
Economic Opportunity Act

Directed Small Business Administration to assist low-income businesses.

Civil Rights Act

Guaranteed equal opportunity for all.

1967
Amendments

Directed SBA to assist minority-owned small business.

1977/78
Public Works Employment Act and the Omnibus Small Business Act

Required at least 10 percent of all federal contracts for local public works projects be expended with minority businesses.

1980
Fullilove v. Klutznick

Public Works Employment Act's MBE provision was challenged in the U.S. Supreme Court by a group of nonminority contractors. The Court voted 6-3 to uphold the set-asides.

U.S. DOT establishes Disadvantaged Business Enterprise program

Originally, the program was a minority- and women-owned business enterprise program established by regulation under the authority of the Civil Rights Act of 1964.

1983
First statutory DBE provision enacted

Applied primarily to small minority-owned firms in U.S. DOT's highway and transit programs.

1988
Richmond v. J.A. Croson Co.

U.S. Supreme Court held that "generalized assertions" of past racial discrimination could not justify "rigid" racial quotas for the awarding of public contracts.

"The dream of a nation of equal citizens in a society where race is irrelevant to personal opportunity and achievement would be lost in a mosaic of shifting preferences based on inherently unmeasurable claims of past wrongs" — Justice Sandra Day O'Connor, from the Croson opinion

1999
49 CFR Part 26 adoption

The U.S. Department of Transportation's DBE program sets a 10 percent nationwide aspirational goal, but does not require that recipients set their goals at 10 percent.

2008/10
Minnesota Collaborative Formed

Commissioner Thomas Sorel designates the DBE & Workforce Collaborative one of Mn/DOT's 12 flagship initiatives. First year was difficult as stakeholders confronted differing visions for transportation projects, competing interests and a lack of trust. The Collaborative built trust and a sense of shared ownership in their work by focusing on common goals and by listening to each other's needs respectfully and in good faith.

Project Team Reports

On-the-Job Training (OJT) Program to Increase Diverse Workforce on Projects

Chair: Alex Tittle, Summit Academy OIC
OCR Staff Support: Ashanti Payne

Rationale: To attract and retain women and minority trainees in the construction industry; to provide a career path, not just a job; to understand the obstacles and barriers to choosing and pursuing a construction career.

Actions:

- Heavy Equipment Operators Training Partnership: Summit OIC, a community training organization, and Operating Engineers Local 49 union entered into a partnership and co-delivered the 20-week Heavy Equipment Operator training. The first class of 19 students (98% minority, 2% women) graduated on July 9, 2010. The next group of graduates is expected to enter the market in May 2011.
- OJT at time of bid: Beginning with the June 5, 2009, letting, for all Mn/DOT construction projects over $1 million with an OJT goal, prime contractors are now required to submit a completed "OJT Program Approval" form with their bid. It requires them to list how they intend to meet their OJT goals with a focus on increasing the participation of women and minorities on Mn/DOT projects. Compliance rate by contractors with this new requirement is very high. Since June 2009, approximately 5-7 bids have been rejected — including one lowest bidder — for not submitting this information. As a reference, approximately one out of 24 Mn/DOT projects has an OJT goal and one-tenth of Mn/DOT's federally funded projects has an OJT goal. This requirement is intended to encourage contractors to proactively work on building a diverse workforce.
- Revised OJT Special Provision: The OJT special provision was revised to allow all apprentices who are officially registered in one of the approved apprenticeship programs to qualify as an OJT. This provision increases the number of OJT hours to coincide with the apprenticeship guidelines based on the specific trades/union agreement. For non-union trainees, the maximum number of OJT hours is 2000 hours. The special provision has been approved by FHWA and takes effect with the July 23, 2010 bid letting. This provides a track for apprentices/trainees to move to journeyman level and promotes the movement of minorities and women into the

Transformational Changes

On all Mn/DOT construction projects over $1 million with an OJT goal, contractors are now required to list how they intend to meet their OJT goals with a focus on increasing the participation of women and minorities.

Apprentices who are officially registered in one of the approved apprenticeship programs now qualify as an OJT. This provision increases the number of OJT hours to coincide with the apprenticeship guidelines based on the specific trades/union agreement.

Transformational Changes

A new Special Provision that applies to projects where the apparent low bid is in excess of $5 million gives the Apparent Low Bidder five business days to submit project and company workforce data to the Office of Civil Rights.

Contractors holding contracts for the top 10 projects in the metro area and who were not meeting their goals were sent a letter from the OCR Director which requested a plan for meeting their goals, their recruitment sources they will utilize and their projections for what they will achieve in terms of minority and women employment.

transportation industry for careers as opposed to just a job.

- July 23, 2010 a new Special Provision was incorporated that applies to projects where the apparent low bid is in excess of $5 million – On applicable projects the Apparent Low Bidder (ALB) has five business days to submit project and company workforce data to the Office of Civil Rights (OCR). The required data includes: the workforce statistics of the ALB during the previous 12 month period, a projection of minority and women employment hours they expect to achieve for the entire project (including subs), a contingency plan if they determine that their current workforce levels are insufficient to achieve the stated project goals and the recruitment sources they will utilize to recruit minority and women candidates. This requirement is a condition of award and must be received within the specified time frame by OCR.
- August 2010 the reimbursement amount for hours worked on a federally funded project by trainees was increased – previous reimbursement amounts were between $1and $3. Now, if a contractor employs a trainee who is a graduate of a Mn/DOT OJT Supportive Services (OJT SS) Program, they can be reimbursed $5 per each hour worked by these individuals on federally funded Mn/DOT projects. If that contractor provides a mentor for that same trainee, then they will be reimbursed an additional $5 for a maximum total of $10 per hours worked by individuals recruited from Mn/DOT OJT SS Programs. Mn/DOT has dedicated over $900K in Federal grants to contract with multiple organizations as part of our OJT SS Program. These community and training organizations will provide training, placement and retention services for minority and women candidates seeking opportunities in the highway heavy industry. The funds have been divided between the following organizations: DEED, Merrick Community Services, Minneapolis Urban League, and Summit Academy.
- Contractors holding contracts for the top 10 projects in the metro area and who were not meeting their goals were sent a letter from the OCR Director which requested a plan for meeting their goals, their recruitment sources they will utilize and their projections for what they will achieve in terms of minority and women employment. Meetings have been scheduled with these contractors and in most cases these meetings have already taken place.
- Commercial Driver License (CDL) Training to train women, minority and disadvantaged individuals (29 were trained) with the goal of providing them with the skills they will need to obtain a commercial driver license (CDL) and related skills to gain entry level, highway heavy construction on the job training (OJT) positions with contractors working on Mn/DOT federal aid projects, local government agencies or entry

level Transportation Specialist Series positions within Mn/DOT.

- ROADS OJT/Supportive Services to perform outreach, recruitment, screening, on-going counseling, advocacy, placement, and case management for minorities, women and disadvantaged individuals.
- New OJT provisions that encourage diverse OJT participants to pursue a career in the construction/highway heavy industry vs. "just another temporary job" in the field and move into journey level status and beyond (OJT team).

Next Steps:

- OJT resource for employers: OCR website to have a link providing a summary of all Minnesota training programs (union and non-union) that could serve as a recruitment resource for contractors to hire a diverse workforce. They will add community training programs along with the list current available at www.constructioncareers.org.
- Placement of trainees and recent graduates on Mn/DOT projects.
- Expansion of Summit OIC/Local 49 Program to other training facilities and labor organizations.

Pilot Project Team

Chairs: Tim Worke, Associated General Contractors, and Tim Farrell, ISAIAH
OCR Staff Support: Emma Corrie and Mary Prescott

Rationale: To assist Mn/DOT in conducting a pilot project wherein the new policies, procedures and programs developed in the Collaborative can be applied to actual construction work and their effectiveness evaluated. It will be a "laboratory" to test, in a real-world situation, the Collaborative's recommendations for improvements in both workforce and DBE practices with a focus on increasing diverse workforce and DBE participation on Mn/DOT projects. Valuable lessons will be learned and the new policies and procedures will be either validated and/or a path to improvement defined.

Actions:

- This committee has been formed very recently, so many details of its functioning will be developed over the next month or so. All affected stakeholders in the Collaborative will be encouraged to become actively involved.
- The selected project is the reconstruction of the intersection of I-694, Trunk Highway 10, and Snelling Avenue. This project has been chosen because of its size, the diverse scopes of work/subcontracting opportuni-

Transformational Changes

A pilot project will be let this spring to test the new policies, procedures and programs developed by the Collaborative and determined if they can be applied to actual construction work. It will be a "laboratory" to test, in a real-world situation, the Collaborative's recommendations for improvements in both workforce and DBE practices with a focus on increasing diverse workforce and DBE participation on Mn/DOT projects. Valuable lessons will be learned and the new policies and procedures will be either validated and/or a path to improvement defined.

"The collaborative has proven to be an effective forum where a diverse group of stakeholders can reach consensus-based decisions on divisive issues that will lead to sustainable and long-lasting solutions."

— Tim Worke

Associated General Contractors of MN

ties and range of crafts/workforce required. The project is scheduled to be let in May 2011 with construction starting in August 2011. It will run for 2½ construction seasons.

Next Steps:

- A pre-bid meeting (mandatory attendance by primes who intend to bid on this project) will be held for all interested prime and sub-contractors. DBEs will be contacted and encouraged to attend. The purpose of the meeting will be to assure that all parties are aware that the project will pilot the changes in Mn/DOT's contracting practices and to allow primes and DBEs to get to know one another.
- A post-award meeting will be held for the winning bidder(s) to introduce them to the Pilot Project Team and the ways in which it will participate in the project. The prime will be required to designate a representative to fully participate in the Team's work and stay accountable for workforce and DBE goals during the duration of the project.
- The fact the project will extend over several seasons will allow for interim evaluations of what ideas and practices are working and what needs to be improved. The first interim review is tentatively planned for the end of the 2011 season. On completion of the project, a comprehensive evaluation in terms assessing the achievement of the project team's goals of increased diverse workforce and DBE participation on this project is anticipated and highly recommended.
- Potential next project to take this proactive planning approach is suggested to be the Cayuga project expected to be let in November 2011.

Mentor Protégé Program for Small/Disadvantaged Business Enterprises

Chair: Hyon Kim, MN Best Enterprises

OCR Staff Support: Kathryn Bique and Abe Hassan

Rationale: The purpose of the Mentor/Protégé Program is to further the development of DBEs including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program via the provision of training and assistance from other firms. The Mentor/Protégé Program will assist DBEs to become more proficient in their respective area of work. The program will focus on increasing the volume of work that emerging DBEs are capable of winning and to broaden the base of their activity, increasing the number and long term stability of certified DBE firms. A Mentor/Protégé arrangement exists when an experienced company or individual (Mentor) provides as-

sistance and training to a DBE (Protégé). The mentor/protégé arrangement can range from technical through management assistance to the creation of a new, jointly-owned firm or agreement. All applications for the Mentor/Protégé Program will be reviewed on a case-by-case basis.

Actions:

- Mentor Protégé program process developed: Mn/DOT as part of the Minnesota Unified Certification Program worked with Met Council and MAC to develop streamlined processes to accept Mentor and Protégé applications, agreements and Mn/UCP approvals. The goal was to have 10 Mentor/Protégé agreements executed by December 2010. The project executed 11 agreements.
- Identified 114 highway heavy possible mentors.
- Twenty-seven protégé applications received waiting to be paired with mentors. Identified 299 highway heavy DBEs.
- Mn/DOT received a federal grant of $200,000 to provide reimbursement to mentors for assistance provided to approved protégés. Mn/DOT will utilize supplemental contracts for project specific mentoring agreements. For mentoring agreements across more than one project, Mn/DOT will reimburse mentors through a professional/technical contract.
- Marketing and outreach group has been established and will begin developing networking group format.
- Developed a Directory for approved Mentor/Protégés.
- Mentor/protégé brochure completed.
- South Central College identified to conduct classes with approved protégés to enhance their drafting of business plans, business development objectives and goals.

Next Steps:

- Mentor protégé orientation/informational event: Mn/DOT, Met Council and MAC are developing a Mentor/Protégé outreach and education event for all interested DBEs and potential mentors. The intent is to educate both mentors and protégés on the complexities of the Mentor/Protégé program and to initiate relationship building between mentors and protégés. Mentor Protégé Orientation Goal: Conduct at least two orientation/information sessions by February 2011.
- Develop an evaluation process with quarterly reporting and process improvement. Revised program requires each protégé to submit a quarterly and annual progress report. Staff will conduct quarterly reviews of assigned M/P pairs. Researching the use of electronic survey tool to capture qualitative mentor/protégé information for use in program evaluation.

Initial Success

The goal was to have 10 Mentor/Protégé agreements executed by December 2010. The project executed 11 agreements.

"The DBE team has been significant in enhancing consistent enforcement processes that will lead to measurable results through achieving DBE goals and facilitating good faith efforts that develop productive relationships throughout the transportation industry."
— **Philip Barnes**
Mn/DOT

- Conduct annual Mentor Protégé evaluations.
- Research other states/programs such as 'CalMentor' to provide ongoing networking opportunities for Mentors and Protégés. This would be an on-going group meeting to discuss successes/obstacles and to continue relationship building. Networking Group Goal: Develop networking group format by July 2011.
- Encourage more primes to serve as mentors.
- Communicate benefits both to primes and to protégés.
- Emerging DBEs are heavily capital dependent. To make a real difference, we need to increase access to capital.
- Train DBEs to graduate from DBE program.

DBE Requirements at Time of Letting/Good Faith Efforts Objective Measures

Chairs: Phil Barnes, Mn/DOT, Barb Christensen, Assn. of Women Contractors
OCR Staff Support: Annastacia deCarrera, Mary Prescott, Kim Collins

Rationale: Improve and increase DBE participation on contracts by both reducing contracts awarded on Good Faith Effort and identifying DBE subcontractors at time of bidding rather than after the fact.

Actions:

- Although there is a lot of work ahead of us, we have made some positive steps to increase DBE participation, which are reflected in the Final FFY 2010 uniform report. Mn/DOT's current annual DBE goal is 8.75% and current achievement rate is 5.6%.
- Total DBE contract awards (prime and subcontractors) increased from 3.6% in FFY 2009 to 5.6% in FFY 2010.
- DBE Subcontractor Awards increased from 9.2% to 15.8% from October 2009 through March 2010 and hit 13.2% overall for the year.
- Setting of DBE Special Provisions Goals: The goals of the revised DBE Special Provision are to maximize all feasible opportunity for DBEs and small businesses to participate in contracts financed in whole or in part with federal funds and are intended to achieve the following objectives:
- Promote earlier involvement in order to maximize DBE participation on projects.
- Increase the number of contractors meeting and exceeding their DBE commitment at the time of bid letting.
- Shift DBE identification to before the bid submittal, thus eliminating

most 0% commitment rates submitted in bids (an established performance measure)

- Reduce the number of contracts awarded on Good Faith Effort rather than goal achievement.
- DBE Special Provision Letter sent to primes, DBEs, Mn/DOT, State, City, County, Project Managers in August 2010 announcing and attaching a new DBE Special Provision. A thorough and detailed letter was sent to all Contractors from the Office Director clearly stating the changes taking place and reiterating what the Good Faith Efforts contract clearance process includes. (Also attached is a flowchart of the new process.)
- Training was provided for all on the DBE Program, DBE Special Provision and Business Development Programs in September 2010. In September and October, Mn/DOT updated websites, forms, and informational materials to ensure consistency with new Provisions.
- Office of Civil Rights met with Mn/DOT Construction Managers and Resident Engineers to clarify questions and recommendations.
- DBE Special Provision implemented Oct. 22, 2010. Two lettings have been done since implementation. In those two lettings there were no 0% commitments awarded contracts and DBE participation was at or near goals.
- A task force made of multiple stakeholders groups met for the second time in November 2010 to explore Open Goal Setting processes on Minnesota Projects. The Task Force explored best practices in other states, in particular Missouri, where open goal setting processes are used.
- OCR received commitment to utilize a Metro Area project — the reconstruction of I-694/US 10/Snelling Avenue — as a pilot to explore a new approach to project delivery that proactively increases participation. Stakeholders in this process are project managers, unions, community training organizations, Mn/DOT and interested community groups. This project will be let in March of 2011. Currently the team is exploring other state/city/county models and Mn/DOT current practices in other engineering areas that could be utilized.
- DBE/Supportive Services Programs: The Office of Civil Rights submitted a proposal to the U.S. DOT for $1.5 million to enhance DBE and supportive services programs with input from stakeholders. A grant of $883,718 was awarded for those programs: DBE Orientation for Newly Certified and Current DBEs; Technical Training (Partnerships with Selby Area CDC and South Central College); Electronic Bidding Licenses; and Increased Certified DBEs (focus on increasing African American DBEs - trying various approaches: Springboard Development Corp. resulted in one new DBE in north Minneapolis; advertising campaign in minority newspapers has resulted in 46 new applicants in 2010; individual business assessments, which broadens bidding scope for current DBEs.

Transformational Changes

Mn/DOT's DBE Special Provision went into effect on Oct. 22, 2010.

"The value of the collaborative process is evident from the shift in dialogue. The focus of stakeholder conversations is shifting from individual needs and concerns to common ground, consensus building and sustainable solutions."

— Emma Corrie

DBE & Workforce Collaborative Project Manager

- DBEs recognizing the value of partnering with other DBEs to jointly bid on Mn/DOT projects; primes considering the potential of joint ventures with DBEs; Greater collaboration between Association of Women Contractors, Associated General Contractors and Association of Minority Contractors – not sure what this is nor do I recall any discussion on this.
- Met with state Small Business Development Center director to discuss partnering opportunities.
- Developed a resource brochure for DBEs.
- Reviewed current program services to identify gaps and weaknesses.
- Developing intensive Business Development Program with Minnesota State Community College system.
- Held a daylong Mn/DOT Pre-Qualification Program Workshop for DBEs in April 2010 at the Mn/DOT Arden Hills Training Center. The workshop explained how Mn/DOT's Pre-Qualification Program works and helped DBE businesses complete the Pre-Qualification paperwork.
- Held a half-day DBE Bonding Workshop in October 2010 at the Mn/DOT Arden Hills Training Center.

Next Steps:

- Mn/DOT is exploring "debundling" through a large Mn/DOT project at the Interstate 694/US 10/Snelling Avenue interchange to allow for greater small business and DBE participation. This pilot project will give Mn/DOT and the Collaborative's stakeholders an opportunity to try many of the recommendations made by the Project Teams and to learn from successes and failures.
- Review the goal-setting process/open goal-setting: This team is proposing that Mn/DOT consider providing the opportunity for interested stakeholders to be present to see how goals are set. They would not be providing input or influencing the goal setting but could provide feedback on the process at a later time.
- Improve Business Development Program capacity-building efforts: Develop a more comprehensive, structured approach to providing business development services to DBE businesses. Research various options within Minnesota (Small Business Development Centers) and outside of Minnesota (Tennessee and Arizona models) to determine the best approach to improve the business capacity of certified DBEs.
- Work with various industry unions and associations to reach a broader DBE audience. Develop targeted outreach efforts to increase DBE pool.

- Research and identify underrepresented work types on Mn/DOT projects. Mn/DOT staff has begun discussions with representatives from Local 49 Heavy Equipment Operators union and the Electrical Contractors Association to develop a DBE education and outreach event for potential DBE businesses.
- Participation by Asian-owned business and Asians in the workforce has been identified as a special concern. Mn/DOT needs to approach Asian workforce and DBE outreach differently. Many Asian workers looking for work, particularly new immigrants, don't go to traditional workforce centers and lack computer skills. Many new immigrants looking for work go to Council on Asian Pacific Islanders, Lao Family Community or the Hmong American Partnership. Mn/DOT is working with members of the Collaborative to increase outreach to Asian DBEs.

"The work of the transparency and accountability team has brought a new focus on availability, attitudes and accountability that will ultimately increase our ability to meet industry demands, demonstrate the value of workforce diversity, and measure our results."

— Louis J. King
Summit Academy OIC

Results Transparency Project Team

Chair: Louis King, Summit Academy OIC
OCR Staff Support: Ashanti Payne

Rationale: To create transparent reporting system that allows us to have a shared understanding of the composition of the Mn/DOT workforce, to monitor that in real time, and to evaluate what projects/initiatives are (and aren't) working to meet our hiring equity goals in order to be accountable, support corrective actions, and to devise process improvements moving forward.

Actions:

- Regularly reporting the number of on-the-job placements of minority and female applicants with Mn/DOT contractors and the number of Disadvantaged Business Enterprises participating in Mn/DOT's federal projects.
- Women and Minority goals added to website: Mn/DOT's construction website has now been updated to show the minority and women goals established on all Mn/DOT projects let in 2010. This information is posted adjacent to bid letting information on the website and will be updated quarterly. Mn/DOT will provide annual forecasts detailing upcoming projects and letting schedule with minority and women participation goals.
- Mn/DOT will provide annual forecasts detailing upcoming projects and contract letting schedule with minority and female participation goals. A six-month letting plan is now available on the website. The four-year State Transportation Improvement Plan (STIP), which is maintained by the Capital Programs office, adopted the same change.
- New Workforce Special provision: Starting with the July 23, 2010, letting,

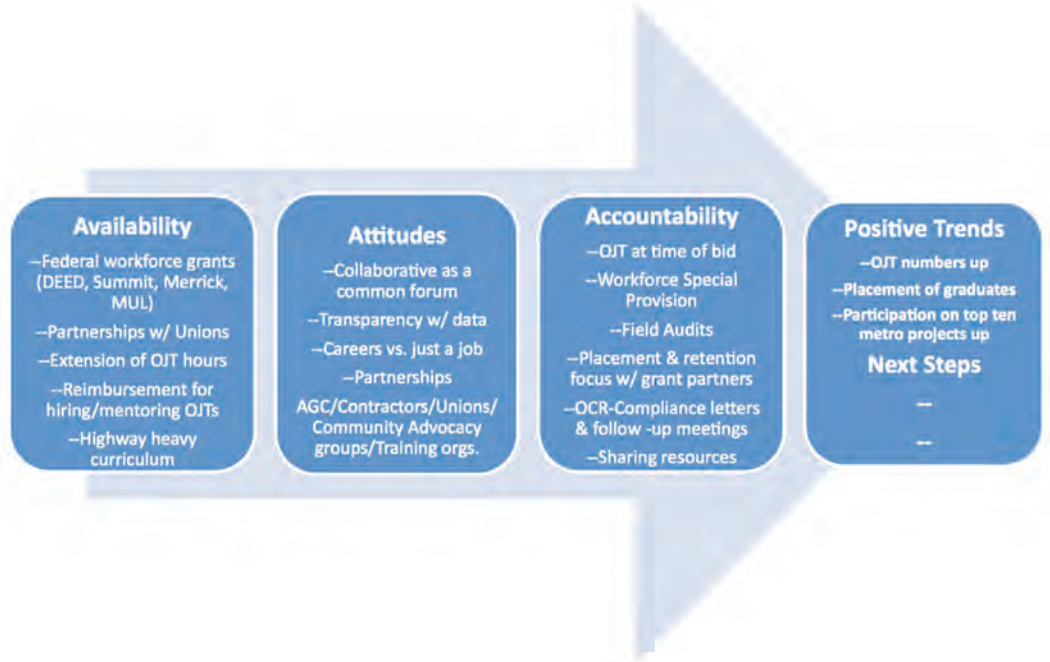
for all Mn/DOT construction projects of $5 million or more, contractors will be required to provide current workforce information, a plan for meeting workforce goals, and workforce projections including projected hours for women and minorities, as a condition of contract award.

Project				Minority		Women	
Project number	**Location**	**Dollar Value**	**Contractor**	**Project Goal**	**Current level**	**Project Goal**	**Current Level**
27-661-34		$24,930,800.72	CS McCrossan	11.00%		6.00%	
27-753-16	Lowry Ave.	$51,454,457.71	Lunda Const Co	11.00%	10.51%	6.00%	0.53%
70-621-24	CSAH 21	$19,957,031.97	Enebak Const Co	11.00%	8.46%	6.00%	7.10%
163-280-20	TH 7 at Wooddale	$11,568,953.11	Ames Const Inc	11.00%	11.75%	6.00%	2.72%
0214-0041	TH 35W from TH 694 to Lake Drive	$8,574,003.62	Valley Paving Inc	11.00%	7.80%	6.00%	0.00%
1985-0132	TH 494 between Hardman and Maxwell Ave	$60,073,361.79	Lunda Const Co	11.00%	9.05%	6.00%	1.89%
2750-0057	TH 169 from 79th Ave to 89th Ave	$49,983,757.00	CS McCrossan	11.00%	5.70%	6.00%	6.97%
2780-0064	TH 94 from 1.5 mile E of TH 101	$16,795,052.46	Interstate Improvement Inc	11.00%	0.00%	6.00%	1.89%
2782-0281	TH 35W from 66th St to 42nd St	$288,306,281.77	Ames/Lunda/Shafer (JV)	11.00%	7.48%	6.00%	3.26%
2782-0296	TH 35W at 35th and 39th St	$13,544,475.88	Ames Const Inc	11.00%	8.53%	6.00%	1.12%

- Monitoring top 10 projects: Established a framework for monitoring the top 10 projects in the metro area. Mn/DOT Commissioner Thomas Sorel sent out letters on June 14, 2010, to the contractors who have been awarded the top 10 metro projects, by dollar value, asking them to voluntarily provide their Minnesota workforce information; plan for meeting their workforce goals and workforce projections for the current projects awarded to them.
- Use of FHWA for baseline reporting in the workforce arena. We now have two years of data.

Next Steps:

- At time of bid, prime contractors must submit their current Minnesota Department of Human Rights (MDHR) Certificate of Compliance on file. Contractors are not currently required to have this certificate at time of bid; they just need it prior to award. A contractor may be in the process of getting it, have applied for it or present an exemption letter at time of bid and still be in compliance with the State Law. This proposal, as it is currently drafted, would require a change in State Law.
- Monthly reporting of workforce hours by trade level, race and gender; total payroll of minority and women as a percentage of total payroll on Federal/State-funded projects to the Legislature and displayed on the Mn/DOT website and other public venues. As a compromise until full implementation of the Civil Rights Software (CRLMS), Mn/DOT will report on the top 10 projects in the metro area. Date of Full Implementation of CRLMS: End of summer 2011.
- Require Mn/DOT to define and publish a basis of noncompliance and follow a process and timeline for referring non-compliant contractors



to the Minnesota Department of Human Rights (MDHR) by listing the names of contractors under compliance review and the results of the review on the website. Coordination is needed with MDHR regarding at what point in the process information regarding a contractor's compliance or non compliance is public data. Some information though public should require a data practices request.

- Work with Mn/DOT to measure the effectiveness of training initiatives. This is an important step in shared accountability — Mn/DOT and contractors are already being held accountable.
- Expand monitoring framework for top 10 metro area projects to largest outstate projects.

Civil Rights Program Training Project Team

Chair: Dan Sprague, MnSCU

OCR Staff Support: Kathryn Bique and Ashanti Payne

Rationale: Ongoing training is necessary so that everyone can navigate the complex rules and regulations that govern state and federal highway projects, in particular their civil rights components. The highway construction audience is very mixed in its knowledge of civil rights requirements: Some are very aware of federal regulations; others are not.

DBE and Workforce Changes

The Collaborative recognized the need to make it simpler and easier for DBEs to get certified and nontraditional workers to be introduced to construction careers.

Actions:

- In June 2010, Mn/DOT, in partnership with FHWA, provided a one-day civil rights training session for Collaborative members. The dual track event, delivered by FHWA's Toney Dixon, focused a half-day on Disadvantaged Business Enterprise and a half-day on Workforce programs. The training was specifically planned for Collaborative members based on feedback received from stakeholders and was intended to provide a basic understanding of the federal regulations that would guide the DBE and workforce programs and inform the work of the individual Project Teams.
- Mn/DOT Office of Civil Rights staff attended two additional days of in-depth training on DBE compliance & DBE certification.
- FHWA Desk Reference: Copies of the USDOT-FHWA's DBE/Supportive Services desk reference manual have been made available for all Collaborative participants.

Next Steps:

- Mn/DOT Informational Sessions: The team is exploring the potential of offering several short informational sessions for interested stakeholders on the following topics:
  - How is Mn/DOT's overall DBE goal set? How are project specific goals set?
  - What is the process for getting certified as a DBE?
  - What supportive services does Mn/DOT offer for DBEs?
  - Others based on feedback received.

Coordinated Access Point for Recruitment of DBEs and Diverse Workforce

Chair: Tim Kennedy, MEDA

OCR Staff Support: Kathryn Bique

Rationale: The charge of the Coordinated Access Point for Recruitment Project Team is to propose a method for:

Bidding Primes to identify DBE firms that can perform work on Mn/DOT projects on which the prime contractor is bidding, and

DBE subcontractor firms to identify prime contractors that are bidding on work which the subcontractor could perform.

Actions:

- Worked with Minnesota Unified Certification Program to discuss how to fund a single point of entry for major certifications. Met with all six certifying agencies and developed a plan including: Developing one form for all certifications, sharing websites, developing grant applications to secure funding for one source of entry.
- Worked with Civil Rights Labor Management System-CRLMS Project Manager to identify DBE Directory format changes. Requested changes include: DBE reference section, detailed company description and additional contact information.

Next Steps:

- Create a single point of entry for major certifications (TGB, CERT, UCP): A proposal to create a single point for certification has been developed and approved by the collaborative. The intent is to grow the number and variety of certified and bidding DBEs and develop a user-friendly and effective DBE directory that is useful to both contractors and DBEs. The proposal still requires funding to be identified (to develop and implement the new unified online form) and buy-in from all three Unified Certification Program agencies — Mn/DOT, Met Council and MAC. Why it matters:
    - ✜ Small number of DBEs and range of construction services provided by DBEs frustrates efforts to meet goals via subcontracts.
    - ✜ Poor quality of, and access to, information on DBE companies makes meaningful solicitation difficult and costly.
    - ✜ Lack of reliable information on subcontracting efforts makes planning for improvement difficult.
    - ✜ Many other project teams need information that this system can provide.
- Coordinated recruitment of a diverse workforce: Contractors are subject to workforce requirements on Mn/DOT projects and report a difficulty in locating and contacting qualified workers. If they do not meet their workforce goals they are required to prove their good faith efforts and report that as being difficult and costly. The team considered three viable options: Job Connect by Ramsey County Workforce Solutions; Iowa DOT model and vendor used by them in partnership with the Iowa AGC; or exploring Mn/DOT's current CRLMS system for potential options. The Project Team recommended Job Connect by Ramsey County Workforce Solutions. A cataloguing of the available workforce that adequately represents the skills and contains correct contact data for each worker will signify success of the database's construction. Verification that the contractors are using the system as their hiring platform, as reported by

"Completing apprenticeship training is the foundation to a lifelong career in the building trades. The restructuring of the OJT program to reflect the total hours of apprenticeship training, broadens the scope of learning experiences and helps encourage and develop careers for our future workforce."

— Mary DesJarlais
MN AFL-CIO

the database's reporting system, will signify the system's success as a useful tool for the contractors. Though this would be a new program for Mn/DOT, versions of this idea have been in use by DOTs in other states, and other governmental units within Minnesota. Close correlates are now being implemented by the City of St. Paul and the Central Corridor Project Office. The proposal has yet to be approved by the Collaborative.

OJT Trainee Tracking and Retention Project Team

Chair: Mary DesJarlais, MN AFL-CIO

OCR Staff Support: Ashanti Payne

Rationale: To foster retention of trainees in the construction industry; to provide a career path, not just a job; to understand the obstacles and barriers to choosing and pursuing a construction career.

Actions:

- New Layoff/Termination form: A new form was developed and is now required to be completed by prime contractors when terminating an OJT in an effort to track reasons for termination/retention issues.
- Increased reimbursement for OJT: Starting with the July 23, 2010 letting, for projects with an OJT goal, contractors will be eligible for $5 per hour reimbursement for each OJT they hire from one of Mn/DOT's approved training programs. They will be eligible for an additional $5 per hour per trainee if they assign a mentor for that trainee. Ratio of no more than 3:1 trainees to mentor must be maintained. To be reimbursed, the contractor must fill in a progress of worker form to identify any red flags/work issues before the potential of termination.
- Advised Mn/DOT during development of the new Civil Rights Labor Management System (CRLMS) software. This online program will make it easier for contractors to manage and report on their workforce participation, while facilitating more efficient monitoring by Mn/DOT.

Next Steps:

- Mid-point and end-of-season exit interviews with OJTs: This team is proposing that OJT trainees be interviewed in order to get first-hand information about their work experience and ideas to improve the program in the future. They support creating a team (CBO coordinator, Mn/DOT staff, foreman or supervisor, EEO staff, union business administrator and mentor) in support of OJTs. They propose to have a neutral third party hired as contract employee who coordinates team

and checks in with each OJT, reporting back to the contractor, Mn/DOT, CBO representative and collaborative.

- Cultural Competency training for contractors/staff.
- Create and maintain best practices log.
- Develop resources for mentors on the job/roles and responsibilities of mentors and trainees.
- Work with Mn/DOT to monitor and evaluate the effectiveness of CRLMS software as a reporting, management and compliance tool.

Targeted Group Business Program for State-Funded Projects Project Team

Chair: Robert Woods, BRICK

OCR Staff Support: Mary Prescott and Annastacia deCarrera

Rationale: The intent of this team is to develop a defensible Targeted Group Business program to be administered by Mn/DOT on state-funded construction projects. The TGB program serves the same purpose for state-funded highway construction projects that the Disadvantaged Business Enterprise program serves for federally funded highway construction projects. "Targeted group businesses" are certified businesses designated by the Department of Administration that are at least 51 percent owned and operated by women, persons with disabilities, or minorities, and that provide goods, products or services within purchasing categories designated by the Commissioner.

Background: In line with the requirements of 16C.16, Designation of Procurement for Small Businesses, Subd(s). 4 and 5 (a-c), Mn/DOT is committed to ensuring that all minority-owned, women-owned or veteran-owned small businesses have the opportunity to participate in contracts and subcontracts financed in whole or in part with State funds. It does so by putting forth programs and policies that provide a level playing field for small minority-owned and women-owned companies wanting to do business with Mn/DOT and other agencies receiving state funds. Mn/DOT is taking steps in proposing amended legislation that reinstates its TGB Program in 2011. MGT of America, on contract with the Department of Administration, released its report on a Joint Availability and Disparity Study for the Minnesota Department of Transportation (and a few other governmental units). The report outlines the need for improved participation of small businesses owned by the following groups: African Americans, Hispanic Americans, Asian Americans, Native Americans, nonminority women and people with disabilities. The report is available at www.mmd.admin.state.mn.us/mn02002.htm.

Proposed Legislation

If the proposed TGB legislation is passed in the 2011 legislative session, Mn/DOT will reinstate its TGB Program, providing greater opportunities on state-funded projects.

More Opportunity

The Collaborative is looking for ways to support greater workforce and subcontracting opportunities on Mn/DOT projects for veterans and people with disabilities.

Actions:

- Worked with Mn/DOT staff to draft proposed legislation to reinstate a defensible TGB program for state-funded transportation projects [See Appendix B].
- Collected testimonials of discrimination in Minnesota highway construction experienced by members of targeted groups in support of the need for legislative action.

Next Steps:

- Pass Mn/DOT's proposed legislation re-establishing a TGB Program for state-funded transportation projects.
- Grow the number of certified DBEs/TGBs: While the TGB program is being developed, the team proposes that Mn/DOT assist potential TGB companies who perform highway heavy work in getting certified. This will ensure a pool of ready, willing and able TGB companies once the program is up and running.
- Increase access to capital for TGB/DBE firms.

Veterans Preference Program Project Team

Chair: Alan Duff, Duff Consulting, LLC

OCR Staff Support: Sedrick Powell and Annastacia deCarrera

Background: In February 2010, Mn/DOT implemented its first Veterans Preference Program. The program is housed and managed from its Office of Civil Rights. The program's structure is a hybrid of the approach utilized by Admin and within the DBE Program. Under the program's auspices, a 6% veteran preference is applied only for the purpose of evaluating proposals, the value of which was not to exceed $60,000. It is not used to determine the contract award amount or payment due to the contractor under the contract. Minn.Stat. §161.321 Subd. 2, (2) sets forth a goal for the use of veteran-owned small business. Specifically it applies to (1) recently separated veterans who have served in active military service at any time, (2) those who have been discharged under annual honorable conditions; and (3) Veterans who are veterans as defined in Minn. Stat. §197.447 with service-connected disabilities, as determined at any time by the U.S. Department of Veterans Affairs.

Rationale: Grow participation of veterans in state transportation projects and familiarize Collaborative members with state veterans preference program. State Veterans Preference Program – introduced in November

2009 – sets goals for veteran-owned businesses (service disabled and honorably discharged since 2001) on all state-funded projects.

Actions: Veterans Preference Project Team is newly formed and began meeting in late 2010.

Next Steps:

- Coordinate Mentor/Protégé program with DBE and Workforce Collaborative members.
- Under DEED leadership, re-organize veterans-based OJT program to recognize Military Occupational Skills as comparable to civilian workforce skills. With DEED, match existing MOS's with civilian skills. Create partnership awareness with Labor Unions and Associated General Contractors.
- Better coordination of SBA and VA computer databases to make it easier to identify veterans and vet-owned businesses for Mn/DOT projects.

"What this Collaborative is proving is that sustainable change needs good foundations and ongoing cooperation to safeguard the positive results it has achieved thus far. The work of the Collaborative is not done — but make no mistake, the foundations have been set and cooperation is being earned. Never easy, but so worth the effort!"

— Dianne Holte

Holte Contracting, Inc.

Working Capital Fund for Small/DBEs

Chair: Dianne Holte, Holte Contracting, Inc.

OCR Staff Support: Kathryn Bique

Rationale: The program will provide short-term working capital loans to certified DBE firms on specified Mn/DOT projects. The goal of the program is to enable DBEs to be successful and to expand and grow their businesses. The WCLF began with a small pool of state funds with the potential for minimal growth with the addition of interest on repaid loans. The WCLF will be operated using loan fund industry standards and will require DBEs to have some creditworthiness to be eligible for a loan.

Actions:

- Secured Initial Loan Capital: Mn/DOT secured and allocated $218,000 for the first year of operation. This is in place and operational now, but it is just a modest start.
- Selected WCLF Loan Administrator: The Metropolitan Economic Development Association (MEDA) selected as WCLF administrator. A contract was executed on November 15, 2010.
- Secured first year loan administration operating capital: MNDOT secured $88,400 in federal grants to fund the first year of administration for the WCLF. The WCLF Administrator funds are used to provide direct loan management and administrative services for the WCLF fund. The WCLF grant itself has no indirect administrative costs attached to it. All costs

associated with the grant are directly attributed to the WCLF program administration and implementation. The Administrator is required to deposit loan funds into an interest bearing account as well as charge a loan interest up to 8%, which will enable the loan pool to grow.

- Conducted a training session for Mn/DOT-certified DBEs in November 2010 with 14 attendees.
- Established all lending guidelines, policies and procedures, application process, underwriting criteria, credit approval, loan origination and funding procedures.
- Created a separate WCLF web site, including an automated on-line registration system and hard copy application process and procedure.
- Established an independent credit committee to review and approve or deny all completed WCLF loan requests.

Next Steps:

- MNDOT to capitalize and transfer the $218,000 into a separate and dedicated WCLF investment account. This dedicated loan capital account, will act as the main account for all subsequent and separate individual loan transactions.
- Conduct the Official Program Launch: (Pending final approval from MNDOT legal counsel). Due to the timing of the launch and the end of the 2010 construction season, the Project Team urges Mn/DOT and the Legislature to reserve judgment on its effectiveness until it has gone through a full construction cycle.
- Ensure a high level of loan capital deployment while maintaining a low loan loss reserve.
- Identify innovative ways to grow the available base of loan fund capital; solicit and secure additional funds (state, federal, foundation). The project Team recommends growing the fund to $5 million.
- Communications & training / Community Outreach: Internally at Mn/DOT as well as to the external stakeholders, communication and training will be integral to success. Particularly in marketing to newly certified and emerging DBEs.
- The WCLF is currently available only to certified DBEs who have been awarded a Mn/DOT contract. The project team recommends opening the fund to DBEs who are under contract on any state project, once the fund has grown sufficiently.
- Working with the WCLF Administrator, establish a loan prequalification system for DBEs to give them faster access to loan funds when they need them. The key to this program is to be able to access the capital quickly.

Recommendations

The Mn/DOT Office of Civil Rights is a member of each of the 11 Collaborative Project Teams and will ultimately be responsible for carrying out the Collaborative's recommendations at Mn/DOT. Collaborative members and stakeholders, more broadly, also have a prime role in carrying on the work of the Collaborative and in ensuring that recommendations in which they have a role are acted upon. This shared accountability is a key value of the Collaborative's members.

Proposed Legislation

Mn/DOT was asked to submit three proposals to the Legislature on behalf of the Collaborative. Mn/DOT, as a partner and implementer, is currently working on the drafts and hopes to submit proposals for legislation during the Minnesota State Legislature's 2011 session:

- **Targeted Group Business Program Reinstatement**: This proposal updates current law to develop a defendable targeted group business (TGB) program to be administered by Mn/DOT on state-funded construction projects. TGBs are small businesses certified by the Department of Administration that are at least 51% owned, operated and controlled on a daily basis by minorities, women, and persons with disabilities. This responds to the Department of Administration order dated March 13, 2010, that both authorizes and requires Mn/DOT to designate TGBs with the purpose of eliminating proven disparities in contracting. [For a draft of the proposed legislation, see Appendix B]
- **Transportation Department Data**: This proposal rewrites the section of law governing classification of design-build data (Minn. Stat. 13.72, Subd. 11). It determines at what point in time during the design-build bidding and contracting processes certain information becomes public, including statements of qualifications, evaluation criteria and scoring methodology, members of the technical review committee, technical proposal, price proposal, and disadvantaged business enterprise and equal employment opportunity data. It also clarifies that if all responses to a request for proposals are rejected prior to award of the project, certain data retain their classification as non-public until a re-solicitation of the request for proposals results in award of the project or a determination is made to abandon the project. [For a draft of the proposed legislation, see Appendix C]
- **Working Capital Loan Fund**: Current statute references a federal regulation for the definition of "socially or economically disadvantaged per-

sons." The state statute incorrectly references Code of Federal Regulations, title 49, section 23.5, instead of section 26. This legislation corrects the reference. Additionally, this legislation clarifies that the working capital loan fund is for "small business concerns," and refers to the appropriate federal definition for this term and for a "socially and economically disadvantaged individual." The Office of Civil Rights has established a working capital loan fund for eligible disadvantaged business enterprises under the federal DBE program. The working capital loan fund is authorized by Minn. Stat. 161.3212. Under this statute, Mn/DOT may grant money to a guaranty fund administered by a non-profit organization that makes or guarantees working capital loans to businesses owned and operated by DBEs. The purpose of the loans must be to provide short-term gap financing to enable eligible DBE businesses to be awarded and successfully complete contracts for construction of — or to provide construction-related materials, supplies, or services for — Mn/DOT projects. Gap financing provides financing for businesses that are financially healthy, but cannot obtain adequate financing from private lending institutions. [For a draft of the proposed legislation, see Appendix D]

Collaborative Recommendations

Future of Collaborative: Members of the Collaborative and Minnesota Department of Transportation leadership are discussing the future role and structure of the Collaborative. Mn/DOT, in consultation with stakeholders, has committed to:

- Monthly meetings of the Collaborative through the 2011 construction season and then quarterly meetings thereafter.
- Tentative meeting dates for the next six months.
- Continuing the special assignment of Project Manager Emma Corrie through the end of 2011.
- Continuing the contract with facilitator Barbara Raye through the end of 2011.
- Continued consultation with the Collaborative over its future structure, perhaps as a smaller advisory committee with less-frequent meetings.

Pilot Project: I694/US10/Snelling Ave — Mn/DOT pilot project in spring 2011 with a proactive planning approach to increasing diverse workforce and subcontractor participation on Mn/DOT construction projects. The fact the project will extend over several seasons will allow for interim evaluations of what ideas and practices are working and what needs to be

improved. On completion of the project, a comprehensive evaluation of the project team's goals of increased diverse workforce and DBE participation on this project is anticipated and highly recommended.

Communicating ongoing work to stakeholders: The Collaborative is working with consultants to develop a strategic communications plan to effectively document and communicate the work of the Collaborative. The project would also, in some instances, generate ideas informing and/or focusing the work of the various Collaborative project teams in order to achieve the goals of increased participation of DBEs and diverse workforce on Mn/DOT projects. The communications plan would be a means both of sharing the ongoing work of the Collaborative with stakeholders and of holding Mn/DOT and Collaborative members accountable for long-term results.

Project Team Recommendations

Below are brief descriptions of project team next steps and recommendations. Fuller descriptions are included in each project team's report.

Civil Rights Program Training

- Mn/DOT Informational Sessions: The team is exploring the potential of offering several short informational sessions for interested stakeholders.

Coordinated Access Point for Recruitment

- Create a single point of entry for major certifications (TGB, CERT, UCP) to grow the number and variety of certified and bidding DBEs and develop a user-friendly and effective DBE directory that is useful to both contractors and DBEs.
- Mn/DOT will continue to work on a new database system (Civil Rights Labor Management System-CRLMS) that will allow for improved information about DBE businesses in the directory.

DBE Requirements at Time of Letting/Good Faith Efforts

- Ensure the success of the I-694/US 10/Snelling Avenue pilot project.
- Review the goal-setting process/open goal setting. Mn/DOT should consider providing the opportunity for interested stakeholders to be present to see how goals are set.
- Develop a more comprehensive, structured approach to providing busi-

ness development services to DBE businesses.
- Develop targeted outreach efforts to increase the DBE pool.
- Research and identify underrepresented work types on Mn/DOT projects.
- Mn/DOT will work with members of the Collaborative to increase outreach to Asian-American DBEs.

Mentor Protégé Program

- Mn/DOT, Met Council and MAC are developing a Mentor/Protégé outreach and education event for all interested DBEs and potential mentors.
- Develop an evaluation process with quarterly reporting and process improvement for M/P pairs.
- Agency staff will conduct quarterly reviews of assigned M/P pairs.
- Consider use of electronic survey tool to capture qualitative mentor/protégé information for use in program evaluation.
- Conduct annual Mentor Protégé evaluations.
- Research other states/programs such as 'CalMentor' to provide ongoing networking opportunities for Mentors and Protégés.
- Recruit more primes to serve as mentors.
- Communicate benefits both to primes and to protégés.
- Increase DBE access to capital.
- Train DBEs to graduate from the DBE program.

On-the-Job Training (OJT) Program

- OCR website will have a link providing a summary of all Minnesota training programs that could serve as a recruitment resource for contractors to hire a diverse workforce.
- Place trainees and recent graduates on Mn/DOT projects.
- Expand Summit Academy OIC/Local 49 Program to other training facilities and labor organizations.

OJT Trainee Tracking and Retention

- Interview OJT trainees to get first-hand information about their work experience and ideas to improve the program in the future.
- Cultural Competency training for contractors/staff.
- Emergency fund for OJT candidates.
- Create and maintain best practices log.

- Develop resources for mentors on the job/roles and responsibilities of mentors and trainees.

Pilot Project

- Hold a mandatory pre-bid meeting for all interested prime and sub-contractors. DBEs will be contacted and encouraged to attend.
- Hold a post-award meeting to introduce winning bidder(s) to the Pilot Project Team and the ways in which it will participate in the project. The prime will be required to designate a representative to fully participate in the Team's work and stay accountable for workforce and DBE goals during the duration of the project.
- Undertake interim evaluations of what ideas and practices are working and what needs to be improved.
- On completion of the project, undertake a comprehensive evaluation of the achievement of the project team's goals of increased diverse workforce and DBE participation on this project.
- Potential next project to take this proactive planning approach is suggested to be the Cayuga project expected to be let in November 2011.

Results Transparency

- At time of bid, prime contractors should be required to submit their current Minnesota Department of Human Rights (MDHR) Certificate of Compliance on file. This proposal would require a change in State Law.
- Require monthly reporting of workforce hours by trade level, race and gender; total payroll of minority and women as a percentage of total payroll on Federal/State-funded projects to the Legislature and displayed on the Mn/DOT website and other public venues.
- Until full implementation of the CRLMS, Mn/DOT will report on top 10 projects in the metro area.
- Require Mn/DOT to define and publish a basis of noncompliance and follow a process and timeline for referring non-compliant contractors to the Minnesota Department of Human Rights.

Targeted Group Business (TGB) Program

- Pass Mn/DOT's proposed legislation re-establishing a TGB Program for state-funded transportation projects. [See Appendix B]
- Mn/DOT should assist potential TGB companies who perform highway heavy work in getting certified. This will ensure a pool of ready, willing and able TGB companies once the program is up and running.

- Increase access to capital for TGB/DBE firms.

Veterans Preference Program

- Coordinate Mentor/Protégé program with Collaborative members.
- Under DEED leadership, re-organize veterans-based OJT program to recognize Military Occupational Skills as comparable to civilian workforce skills. With DEED, match existing MOS's with civilian skills. Create partnership awareness with Labor Unions and Associated General Contractors.
- Better coordination of SBA and VA computer databases to make it easier to identify veterans and vet-owned businesses for Mn/DOT projects.

Working Capital Loan Fund

- The Team urges Mn/DOT and the Legislature to reserve judgment on the fund's effectiveness until it has gone through a full construction cycle.
- Ensure a high level of loan capital deployment while maintaining a low loan loss reserve.
- Identify innovative ways to grow the available base of loan fund capital; solicit and secure additional funds (state, federal, foundation). The project Team recommends growing the fund to $5 million.
- Communication and training will be integral to success. Particularly in marketing to newly certified and emerging DBEs.
- The WCLF is currently available only to certified DBEs who have been awarded a Mn/DOT contract. The project team recommends opening the fund to DBEs who are under contract on any state project, once the fund has grown sufficiently.
- Establish a loan prequalification system for DBEs to give them faster access to loan funds when they need them.

Appendices

Appendix A: MN Statutes 2010, 174.186

1 MINNESOTA STATUTES 2010 174.186

174.186 DISADVANTAGED BUSINESS ENTERPRISE COLLABORATIVE.

Subdivision 1. **Establishment; purpose.** (a) The commissioner of transportation shall convene regular meetings of the disadvantaged business enterprise program and workforce inclusion collaborative, as constituted by the commissioner as of January 1, 2010.

(b) The collaborative shall review and evaluate the commissioner's implementation of the disadvantaged business enterprise program, under Code of Federal Regulations, title 49, and recommend changes, including possible legislation, to improve the effectiveness of the program in this state. At a minimum, the collaborative shall review, evaluate, and recommend program changes where necessary in the following areas:

(1) an on-the-job training program to increase the diversity of the workforce on projects;

(2) on-the-job trainee tracking and retention;

(3) a mentor and protégé program for small, disadvantaged business entrepreneurs;

(4) requirements for participation of disadvantaged business enterprises at the time of letting bids for contracts;

(5) a coordinated access point to recruit disadvantaged business enterprises and a diverse workforce;

(6) objective measures for good-faith efforts to recruit disadvantaged business enterprises;

(7) a working capital fund for small disadvantaged business enterprises;

(8) increased transparency for results in the on-the-job training and disadvantaged business enterprise programs;

(9) civil rights program training;

(10) a targeted group business program for state-funded projects; and

(11) coding systems and dual goals for women and people of color.

(c) The commissioner shall provide staff and administrative support for the collaborative and shall establish policies and procedures for the collaborative, including quorum requirements and majority decision making.

(d) The representatives of the Department of Transportation with responsibility for civil rights and contracting shall participate in collaborative meetings and deliberations.

(e) Members of the collaborative do not receive compensation or reimbursement of expenses.

Subd. 2. **Powers and duties; report.** (a) The collaborative shall develop recommendations to the commissioner and to the legislature as provided in paragraph (b) designed to implement fully the federal Disadvantaged Business Enterprise program in this state and to improve the effectiveness of the program. These recommendations, including any draft legislation if the collaborative decides to recommend legislation, may include, but are not limited to, strategies, policies, and actions focused on:

(1) requiring bid proposals to include information on disadvantaged business enterprise participation;

Acknowledgement

The DBE & Workforce Collaborative would like to recognize the leadership and support of Sen. Linda Higgins and Rep. Bobby Joe Champion.

Appendix B: Proposed TGB Program Reinstatement Legislation

12/27/10 REVISOR EB/DI 11-0336

A bill for an act

relating to transportation; modifying provisions relating to contract bid preferences for highway construction projects; making clarifying changes; amending Minnesota Statutes 2010, section 161.321.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 161.321, is amended to read:

161.321 SMALL BUSINESS CONTRACTS.

Subdivision 1. **Definitions.** For purposes of this section the following terms have the meanings given them, except where the context clearly indicates a different meaning is intended.

(a) "Award" means the granting of a contract in accordance with all applicable laws and rules governing competitive bidding except as otherwise provided in this section.

(b) "Contract" means an agreement entered into between a business entity and the state of Minnesota for the construction of transportation improvements.

(c) "Subcontractor" means a business entity which enters into a legally binding agreement with another business entity which is a party to a contract as defined in paragraph (b).

(d) "Targeted group business" means a business designated under section 16C.16, subdivision 5.

(e) "Veteran-owned small business" means a business designated under section 16C.16, subdivision 6a.

Subd. 1a. **Legislative findings.** The legislature finds as follows:

Section 1. 1

12/27/10 REVISOR EB/DI 11-0336

(1) businesses that are operated and majority-owned by nonminority women, by persons with any substantial physical disability, or by members of a specific minority group are underutilized in Minnesota highway construction contracts;

(2) at the time of these findings, evidence demonstrates that race-neutral measures are ineffective to correct the impact of past discrimination that exists in highway construction and must be supplemented with race- and gender-conscious measures; and

(3) the state has a compelling interest to remedy the effects of past or present discrimination in the Minnesota highway construction industry through the implementation of a targeted group business program that meets state and federal constitutional guidelines.

Subd. 2. **Small business set-asides; procurement and construction contract preferences.** (a) The commissioner may award up to a six percent preference in the amount bid for specified construction work to small targeted group businesses and veteran-owned small businesses.

(b) The commissioner may designate a contract for construction work for award only to small targeted group businesses if the commissioner determines that at least three small targeted group businesses are likely to bid. The commissioner may designate a contract for construction work for award only to veteran-owned small businesses if the commissioner determines that at least three veteran-owned small businesses are likely to bid.

(c) ~~The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract a portion of the contract to small targeted group businesses and veteran-owned small businesses. The commissioner must establish a procedure for granting waivers from the subcontracting requirement when qualified small targeted group businesses and veteran-owned small businesses are not reasonably available. The commissioner may establish financial incentives for prime contractors who exceed the goals for use of subcontractors and financial penalties for prime contractors who fail to meet goals under this paragraph. The subcontracting requirements of this paragraph do not apply to prime contractors who are small targeted group businesses or veteran-owned small businesses.~~ The commissioner may award up to a six percent preference in the amount bid on procurement to small businesses located in an economically disadvantaged area as defined in section 16C.16, subdivision 7.

(d) The commissioner may award up to a four percent preference in the amount bid on ~~procurement~~ state construction to small businesses located in an economically disadvantaged area as defined in section 16C.16, subdivision 7.

Subd. 2a. **Subcontracting goals.** (a) The commissioner, as a condition of awarding a construction contract, may set goals that require the prime contractor to subcontract portions of the contract to small targeted group businesses and veteran-owned small

Section 1. 2

3.1 businesses. Prime contractors must demonstrate good faith efforts to meet the project
3.2 goals. The commissioner shall establish a procedure for granting waivers from the
3.3 subcontracting requirement when either qualified small targeted group businesses or
3.4 veteran-owned small businesses, or both, are not reasonably available. The commissioner
3.5 may establish (1) financial incentives for prime contractors who exceed the goals set for
3.6 the use of subcontractors under this subdivision and (2) sanctions for prime contractors
3.7 who fail to make good faith efforts to meet the goals set under this subdivision.
3.8 (b) The small targeted group business subcontracting requirements of this
3.9 subdivision do not apply to prime contractors who are small targeted group businesses.
3.10 The veteran-owned small business subcontracting requirements of this subdivision do not
3.11 apply to prime contractors who are veteran-owned small businesses.
3.12 Subd. 3. **Subcontract awards to small businesses.** At least 75 percent of
3.13 subcontracts awarded to small targeted group businesses must be performed by the
3.14 business to which the subcontract is awarded or another small targeted group business.
3.15 At least 75 percent of subcontracts awarded to veteran-owned small businesses must be
3.16 performed by the business to which the subcontract is awarded or another veteran-owned
3.17 small business.
3.18 Subd. 4. **Contract awards, limitations.** Contracts awarded pursuant to this
3.19 section are subject to all limitations contained in rules adopted by the commissioner
3.20 of administration.
3.21 Subd. 4a. **Limited duration and reevaluation.** The commissioner shall
3.22 periodically reevaluate the targeted group businesses to determine that there is a statistical
3.23 disparity between the percentage of construction contracts awarded to businesses owned
3.24 by targeted group members and the representation of businesses owned by targeted group
3.25 members among all businesses in the state in the construction category. The commissioner
3.26 shall remove targeted group businesses when the goal for a specific group is achieved, and:
3.27 (1) a subsequent disparity study produces evidence that there is no longer a statistical
3.28 disparity for the group; or
3.29 (2) some other accepted method produces evidence that there is no longer a
3.30 statistical disparity for the group.
3.31 Subd. 5. **Recourse to other businesses.** If the commissioner is unable to award
3.32 a contract pursuant to the provisions of subdivisions 2 ~~and 3~~ to 4a, the award may be
3.33 placed pursuant to the normal solicitation and award provisions set forth in this chapter
3.34 and chapter 16C.
3.35 Subd. 6. **Rules.** The rules adopted by the commissioner of administration to define
3.36 small businesses and to set time and other eligibility requirements for participation in

4.1 programs under sections 16C.16 to 16C.19 apply to this section. The commissioner may
4.2 promulgate other rules necessary to carry out this section.
4.3 Subd. 7. **Noncompetitive bids.** The commissioner is encouraged to purchase
4.4 from small targeted group businesses and veteran-owned small businesses designated
4.5 under section 16C.16 when making purchases that are not subject to competitive bidding
4.6 procedures.
4.7 Subd. 8. **Report by commissioner.** The commissioner ~~of transportation~~ shall
4.8 report to the commissioner of administration on compliance with this section. The
4.9 information must be reported at the time and in the manner requested by the commissioner
4.10 of administration.

Appendix C: Proposed Transportation Department Data Legislation

12/21/10 REVISOR EB/RT 11-0333

A bill for an act

relating to data practices; classifying data obtained for design-build transportation projects; amending Minnesota Statutes 2010, section 13.72, subdivision 11.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 13.72, subdivision 11, is amended to read:

Subd. 11. **Design-build transportation project data.** (a) When the ~~Department~~ commissioner of transportation undertakes a design-build transportation project as defined in section 161.3410, subdivision 6, ~~the statement of qualification evaluation criteria and scoring methodology, statement of qualification evaluations, technical proposal evaluation criteria and scoring methodology, and technical proposal evaluations are classified as protected nonpublic data with regard to data not on individuals and as confidential data on individuals. The statement of qualification evaluation criteria and scoring methodology and statement of qualification evaluations are public when the Department of Transportation announces the short list of qualified contractors. The technical proposal evaluation criteria, scoring methodology, and technical proposal evaluations are public when the project is awarded.~~ and:

(1) solicits a request for qualifications (RFQ), as defined in section 161.3410, subdivision 9, then:

(i) the statement of qualifications evaluation criteria and scoring methodology, identifying information concerning the members of the technical review committee, and the statement of qualifications evaluations are classified as protected nonpublic data; and

(ii) the statement of qualifications submitted by a potential design-build firm, as defined by section 161.3410, subdivision 4, is classified as nonpublic data;

Section 1. 1

12/21/10 REVISOR EB/RT 11-0333

2.1 (2) announces the short list of qualified design-build firms, then the statement
2.2 of qualifications evaluation criteria and scoring methodology and the statement of
2.3 qualifications evaluations become public;
2.4 (3) solicits a request for proposals (RFP), as defined in section 161.3410, subdivision
2.5 8, then:
2.6 (i) the technical proposal; price proposal; disadvantaged business enterprise and
2.7 equal employment opportunity submittal; and government data maintained to evaluate
2.8 the disadvantaged business enterprise and equal employment opportunity submittal, are
2.9 classified as nonpublic data; and
2.10 (ii) the technical proposal evaluation criteria and scoring methodology, and technical
2.11 proposal evaluations are classified as protected nonpublic data; and
2.12 (4) opens the price proposals, as required by section 161.3426, subdivision 1,
2.13 paragraph (b), then:
2.14 (i) the technical proposal evaluation scores and price proposals become public;
2.15 (ii) the statement of qualifications submitted by a potential design-build firm;
2.16 the technical proposal; the disadvantaged business enterprise and equal employment
2.17 opportunity submittal; and government data maintained to evaluate the disadvantaged
2.18 business enterprise and equal employment opportunity submittal, remain nonpublic data
2.19 until the project is awarded; and
2.20 (iii) the technical proposal evaluation criteria and scoring methodology; technical
2.21 proposal evaluations, other than scores made public according to item (i); and identifying
2.22 information concerning the members of the technical review committee, remain protected
2.23 nonpublic data until the project is awarded.
2.24 (b) If all responses to a request for proposals are rejected before awarding the
2.25 project, all data, other than data made public according to this subdivision, retain their
2.26 classification until a resolicitation of the request for proposals results in award of the
2.27 project or a determination is made to abandon the project. If a resolicitation of proposals
2.28 does not occur within one year of the announcement of the short list of qualified
2.29 design-build firms, the remaining data become public.

Section 1. 2

Appendix D: Proposed Working Capital Loan Fund Legislation

11/30/10 REVISOR EB/JC 11-0217

A bill for an act

relating to transportation; providing for working capital loans to certain small businesses to secure contracts with government agencies; amending Minnesota Statutes 2010, section 161.3212.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2010, section 161.3212, is amended to read:

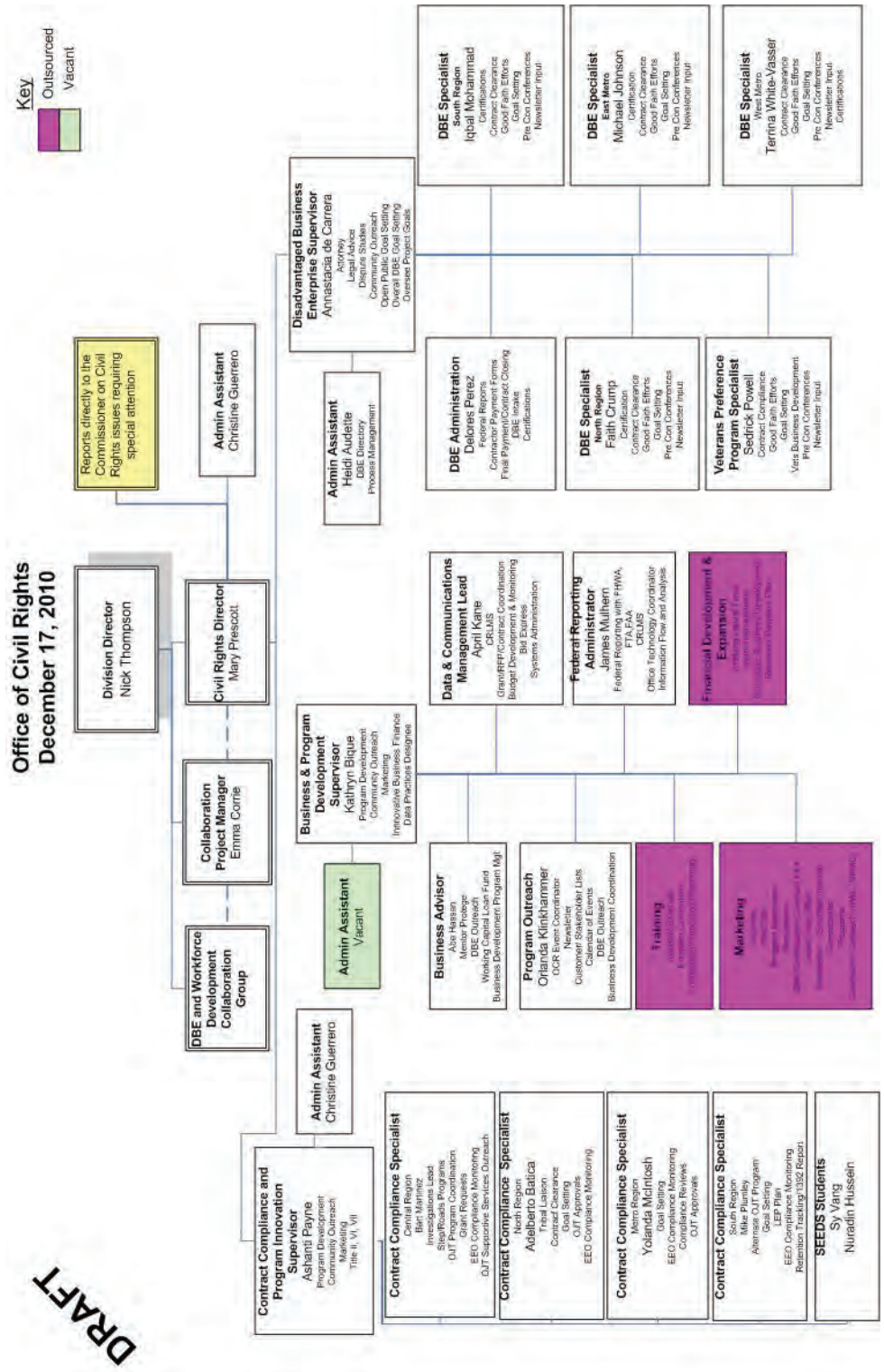
161.3212 WORKING CAPITAL FUND.

The commissioner, to the extent allowed by other law or contract, may grant available money that has been appropriated for socially or economically disadvantaged business programs to a guaranty fund administered by a nonprofit organization that makes or guarantees working capital loans to ~~businesses~~ small business concerns owned and operated by socially ~~or~~ and economically disadvantaged ~~persons as defined~~ individuals. "Small business concern" and "socially and economically disadvantaged individual" have the meanings given them in Code of Federal Regulations, title 49, section ~~23.5~~ 26.5. The purpose of loans made or guaranteed by the organization must be to provide short-term working capital to enable eligible businesses to be awarded contracts for goods and services or for construction-related services from government agencies.

Money contributed from a constitutionally or statutorily dedicated fund must be used only for purposes consistent with the purposes of the dedicated fund.

Section 1. 1

Appendix E: Office of Civil Rights organizational chart



Appendix F: DBE Special Provision Contractor Letter

Minnesota Department of Transportation
Transportation Building
395 John Ireland Boulevard MS 170
Saint Paul, MN 55155-1899

October 27, 2010

Dear Contractors:

As previously announced, Mn/DOT's implementation of the revised Disadvantaged Business Enterprise (DBE) Special Provisions are effective as of the October 22, 2010 letting. The purpose of this letter is to reiterate that there are changes in the DBE Program and all bidders must meet the program requirements. As stated in my August 31, 2010 letter, the goal of the DBE Special Provisions is to maximize opportunities, to the extent required by the federal regulations, for DBEs and small businesses to participate in contracts financed in whole or in part with federal funds. This is a long letter. You need to read the entire letter to understand how contractor adequate good faith efforts will be evaluated in Mn/DOT's DBE Program.

We will continue to evaluate each project on a case-by-case basis and against each of the standards in 49 C.F.R. Part 26, Appendix A. Because some contractors have expressed confusion about how Mn/DOT's Office of Civil Rights (OCR) conducts evaluations of good faith efforts, we offer the following clarification:

1. OCR will not consider a contractor's performance in meeting goals or making adequate good faith efforts **on prior projects** when evaluating good faith efforts on contracts for which bids are submitted after October 22, 2010. This approach is consistent with the federal regulations.

2. DBE Special Provisions training was provided on September 21, 2010 at the Shoreview Community Center. A video of the complete training (which covers all aspects of the new DBE Special Provisions) is available online, along with copies of the power point and other training materials. This information is available on our website at http://www.dot.state.mn.us/civilrights/. Look for DBE Special Provisions Training on the home page.

3. **The apparent low bidder on each project must submit good faith efforts documentation within five (5) business days after bid letting. This is a mandatory requirement.**

4. The federal regulations at 49 C.F.R. Part 26, Appendix A provide guidance for OCR to use in evaluating adequate good faith efforts. The regulations state, "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 DBE participation sufficient to meet the DBE contract goal." See 49 C.F.R. Part 26, Appendix A(II). Therefore, good

An Equal Opportunity Employer

faith efforts are deliberate, meaningful actions performed by the bidder in a proactive effort to increase DBE participation.

The following information references 49 C.F.R. Part 26, Appendix A. It is included here in summary to explain to you the factors that federal law requires the OCR to use in evaluating your good faith efforts. This is neither an exclusive nor exhaustive list of the relevant factors considered in the evaluation process. It gives you guidance regarding the good faith efforts review process performed by OCR. Federal regulations govern the DBE Program and all bidders are responsible for reading, understanding, and complying with the requirements of 49 C.F.R. Part 26, Appendix A. If you are the apparent low bidder and you do not meet the DBE goal or document adequate good faith efforts to meet the DBE goal, federal regulations require Mn/DOT to reject your bid as non-responsible. Following are *examples* of the types of actions that the federal regulations say Mn/DOT should consider when evaluating the bidder's good faith efforts to obtain DBE participation. Each action, as outlined in 49 C.F.R. Part 26, Appendix A (referred to below as "Appendix A"), appears in italics:

1. Solicitation

Appendix A (IV)(A) states: *Soliciting through all reasonable and available means (e.g. attendance at 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 bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.*

This means that OCR may:

- Review and assess the good faith efforts information you provide to determine the reasonableness of your solicitation efforts regarding timeliness, method of soliciting DBEs, and appropriate follow-up. You should provide detailed information about your solicitation efforts – who you solicited, when, how many times, the manner of the solicitation (e.g. email, fax, phone, etc.), whether you negotiated with the DBE, and the responses you received.
- Based on the results of your solicitation efforts, OCR may review and assess the follow up steps taken by the bidder to determine if DBEs are interested in the project (describe the follow up communication you had with DBEs).
- The use of individual, project specific communications when making DBE solicitations is strongly encouraged. The most effective communication is targeted towards the needs of each individual project. You may find it useful to maintain a

An Equal Opportunity Employer

record or a log of all such communications to assist you in documenting your good faith efforts to OCR.

This is not an exclusive list of the factors OCR may consider.

2. Select Portions of Work to be Performed by DBEs

Appendix A (IV)(B) states: *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 prime contractor might otherwise prefer to perform these work items with its own forces.*

This means that OCR may:

- Review and assess your efforts to identify the scopes of work that present opportunities for DBE participation and whether you appropriately solicited DBEs for those scopes of work.
- Assess, where appropriate, whether you considered or attempted to "break out" some of the work in a project to increase opportunity for DBE participation, for example work types or economically feasible units.

This is not an exclusive list of the factors OCR may consider.

3. Provide Information to Interested DBEs

Appendix A (IV)(C) states: *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.*

This means that OCR may:

- Review and assess the information you provide to OCR to determine whether you provided adequate information containing project details to DBEs in a manner that allowed the DBE to seriously consider and respond to your solicitation. OCR may review what information was provided, when, where, and how.

This is not an exclusive list of the factors OCR may consider.

An Equal Opportunity Employer

4. Negotiating in good faith with interested DBEs

Appendix A (IV)(D)(1) states: *Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs 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 DBEs to perform the work.*

Appendix A (IV)(D)(2) states: *A bidder 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 the bidder's failure to meet the contract DBE 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 DBEs if the price difference is excessive or unreasonable.*

This means that OCR may:

- Review and assess the information you provide to document the actions you took to communicate with interested DBE(s) regarding their quotes or participation in the project.
- Review and assess your explanation of why agreements could not be reached with DBEs through further communication and negotiation of the terms.
- Review and assess the information you submit that demonstrates that you made real efforts to negotiate with DBE(s), meaning engaging in a discussion with a DBE in an effort to reach an agreement regarding the DBE's participation in the project. (Maintaining a log or record of all communications with DBEs may be helpful.)
- Review and assess the information you submit explaining why you rejected any DBEs due to cost, and how you determined that certain DBE costs were excessive or unreasonable.
- Review and assess information you provide demonstrating that you followed up with interested DBEs who submitted higher quotes and with whom you attempted to negotiate the scope of work, cost, or other terms.

An Equal Opportunity Employer

- The federal regulations state that the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for the bidder's failure to meet the contract DBE goal so long as such costs are reasonable. If you believe the cost difference is excessive or unreasonable, you should explain how you came to that conclusion.

This is not an exclusive list of the factors OCR may consider.

5. Rejection of DBEs

Appendix A (IV)(E) states: *Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor'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 the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.*

This means that OCR may:

- Review and assess the information you provide to determine whether you rejected DBEs as unqualified.
- If you reject a DBE as unqualified, you should explain why you believed it was unqualified and how you determined it was unqualified.

This is not an exclusive list of the factors OCR may consider.

6. Assistance to DBEs: Financial

Appendix A (IV)(F) states: *Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by [Mn/DOT] or the contractor.*

This means OCR may:

- Review and assess the information you provide to determine whether you made efforts to assist interested DBEs to obtain bonding, lines of credit, or insurance.
- You should identify each of the efforts you made to assist DBEs in this manner.

This is not an exclusive list of the factors OCR may consider.

7. Assistance to DBEs: Equipment and Supplies

Appendix A (IV)(G) states: *Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.*

This means OCR may:

- Review and assess the information you provide to determine whether you made efforts to assist interested DBEs to obtain equipment, supplies, materials, or related assistance or services.
- You should identify each of the efforts you made to assist DBEs in this manner.

This is not an exclusive list of the factors OCR may consider.

8. Recruitment and Placement of DBEs

Appendix A (IV)(H) states: *Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal women/minority business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.*

This means OCR may:

- Review and assess the information you provide to determine whether you made efforts to use the services of minority/women community organizations, groups, business assistance offices or other organizations to provide assistance in the recruitment and placement of DBEs.
- You should provide details about the efforts you made to recruit DBEs including information such as names and dates of organizations contacted, names of lists you used, meetings attended, calls made, etc.

This is not an exclusive list of the factors OCR may consider.

9. Performance of Other Bidders

Appendix A (V) states: *In determining whether the bidder has made good faith efforts, you [Mn/DOT] may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you [MnDOT] may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but exceeds the average DBE participation obtained by other bidders, you [Mn/DOT] may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.*

This means OCR may:

- Review and assess the information you provide to determine the DBE commitment rate you submitted. OCR may compare the commitment rate you submitted to the

commitment rates submitted by other bidders and may calculate the average commitment rate of the other bidders.

- **Note:** This criterion does not stand alone. The regulation states that it may be used "in conjunction with other factors." This means the calculation above is only one of ten types of actions that may be reviewed and assessed by OCR.

This is not an exclusive list of the factors OCR may consider.

10. Other Good Faith Efforts Submitted by Bidder

The federal regulations state that the list of types of actions that Mn/DOT may consider as part of the bidder's good faith efforts to obtain DBE participation is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. That is why we repeatedly remind you that the factors we listed as examples are not exclusive or exhaustive. If you believe that you have taken other actions or made other types of efforts that demonstrate adequate good faith efforts, it is your responsibility to provide that information to OCR within the five business days allowed in the DBE Special Provisions for the submission of good faith efforts information.

This means OCR may:

- Review and assess any other information you provide that you believe demonstrates good faith efforts.

We remind you that the federal regulations require that the bidder show that it took all necessary and reasonable efforts to meet a DBE goal or to demonstrate adequate good faith efforts which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. Compliance with federal DBE Program requirements will be evaluated for each project on a case-by-case basis without regard to a contractor's prior compliance history or prior award of projects.

Finally, OCR Staff are available to assist you. A fax machine was recently purchased specifically for the DBE Section to receive and relay documents timely. **The new DBE Section Fax number is (651) 296-1080.** We urge you to contact staff if you need any clarification or explanation of the regulations. Listed below are the staff by region/district and their telephone numbers and e-mail addresses:

REGION/DISTRICT	NAME	PHONE	E-MAIL
Design Build Projects	Annastacia deCarrera	(651)366-3329	annastacia.decarrera@state.mn.us
North (Districts 1, 2, 3,4)	Faith Crump	(651)366-3323	faith.crump@state.mn.us

An Equal Opportunity Employer

South (Districts 6, 7, 8)	Igbal Mohammad	(651)366-3320	igbal.mohammad@state.mn.us
West Metro	Terrina White-Vasser	(651)366-3074	terrina.white-vasser@state.mn.us
East Metro/Transit Projects	Michael Johnson	(651)366-3330	michael.johnson@state.mn.us
Veterans Preference Programs	Sedrick Powell	(651)366-3335	sedrick.powell.@state.mn.us
DBE Program Assistance	DeLores Perez	(651)366-3151	delores.perez@state.mn.us
Administrative Assistance	Heidi Audette	(651)366-3328	heidi.audette@state.mn.us

We look forward to working with you on future projects.

Sincerely,

Mary Prescott
Acting Director

Cc: Minnesota Certified DBES
Commissioner Thomas K Sorel
Deputy Commissioner Khani Sahebjam
Mn/DOT Division Directors
County/City Engineers
Office of Civil Rights Staff
Mn/DOT Chief Counsel
DBE and Workforce Dev. Collaborative
Transportation Industry Organizations
State/City/County Project Managers
Mn/DOT District Engineers
Mn/DOT Office Directors
FHWA

An Equal Opportunity Employer

Appendix G: Sample Workforce Enforcement Letter

DATE

(EEO Officer)
(Company Name)
(Company Address)

Dear (Prime Contractor)

Under the implementation of the Highway Act of 1968, the Federal Highway Administration and delegated state agencies such as the Minnesota Department of Transportation (Mn/DOT) have been assigned the responsibility for conducting equal employment opportunity (EEO) compliance programs, and enforcement responsibilities on contractors holding federal-aid highway contracts. In addition, Minnesota Statute 363, and its accompanying rules, and the "EEO Special Provisions" of your contract which are consistent with the Highway Act of 1968, require the employment monitoring of projects financed all or in part by State Aid.

The Mn/DOT Office of Civil Rights is here to help contractors comply with the contract EEO Special Provisions. Attached with this letter is a list of organizations that are likely to yield qualified minority and/or women applicants. Mn/DOT is also willing to sit down and meet with your representative(s) to outline recruitment strategies and best practices that will assist in increasing your overall diversity, and we can also facilitate meetings and/or tours of training facilities and organizations that can provide qualified minority and women applicants.

(Prime Contractor) to date is not meeting their current workforce employment/hiring (minority and women utilization) goal on (State Project #), which are a part of the Mn/DOT EEO Special Provisions listed in the project contract. The Prime Contractor is accountable to provide results oriented EEO recruitment, and hiring practices that help to attain their EEO employment workforce goals. It is Mn/DOT's expectation that contractors are proactive in the evaluation, measurement, accomplishment, and success towards EEO workforce goal attainment before and throughout the duration of the construction project. Mn/DOT is interested in assisting you in this effort.

The stated goals for this project are (#) % minority employment, and (#) % women employment. Documentation indicates (Prime Contractor) has achieved (#) % minority employment, and (#) % women employment to the date of the most recent review of your current achievement level.

As a result of this EEO workforce analysis, review, and status of (Prime Contractor), Mn/DOT shall request documentation of the efforts made and/or plan to comply with the Specific Federal Equal Employment Opportunity Responsibilities outlined in 23 CFR 230, Subpart A, Appendix A, and can be found on EEO Pages 6-7 as part of the EEO Special Provisions contained in your contract. In particu-

lar we are requesting documentation of your efforts and/or plan that address the following:

5. Recruitment - systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, identification of sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

7. Training and Promotion - The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees and applicants for employment.

8. Unions - If a contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group members and women, so that they may qualify for higher paying employment.

The documentation to address these items must be received by Mn/DOT's Office of Civil Rights no later than September 1, 2010 and can be addressed to Ashanti Payne, 395 John Ireland Blvd.,

MS 170, St. Paul, MN 55155 or send to his e-mail address at Ashanti.payne@state.mn.us. Please note that Mn/DOT is in the process of both scheduling and performing EEO Contract Compliance reviews to determine compliance status and any corrective actions necessary. Some Prime contractors may be selected to participate in an EEO Compliance Review based on their EEO workforce goal status and performance.

If you are interested in scheduling a meeting to discuss strategic initiatives and/or developing a plan that will assist your company in achieving the EEO objectives outlined in your contract, please contact me as soon as possible. If you have any questions or need further assistance feel free to contact our office.

Thank you in advance for your attention, cooperation with this important matter, and the implementation of strategies that increase the success of the EEO workforce goals status of this project.

Sincerely,

Mary Prescott
Director
Office of Civil Rights

Enclosures: List of Recruitment Sources

cc: Nick Thompson, Division Director
Policy, Safety & Strategic Initiatives Division

ESTIMATED COSTS OF PREPARING THIS REPORT

The cost information reported below is the estimated cost of preparing this report document. In accordance with Minn. Stat. 3.197, the estimated cost incurred by Minnesota Department of Transportation in preparing this report is $16,000.