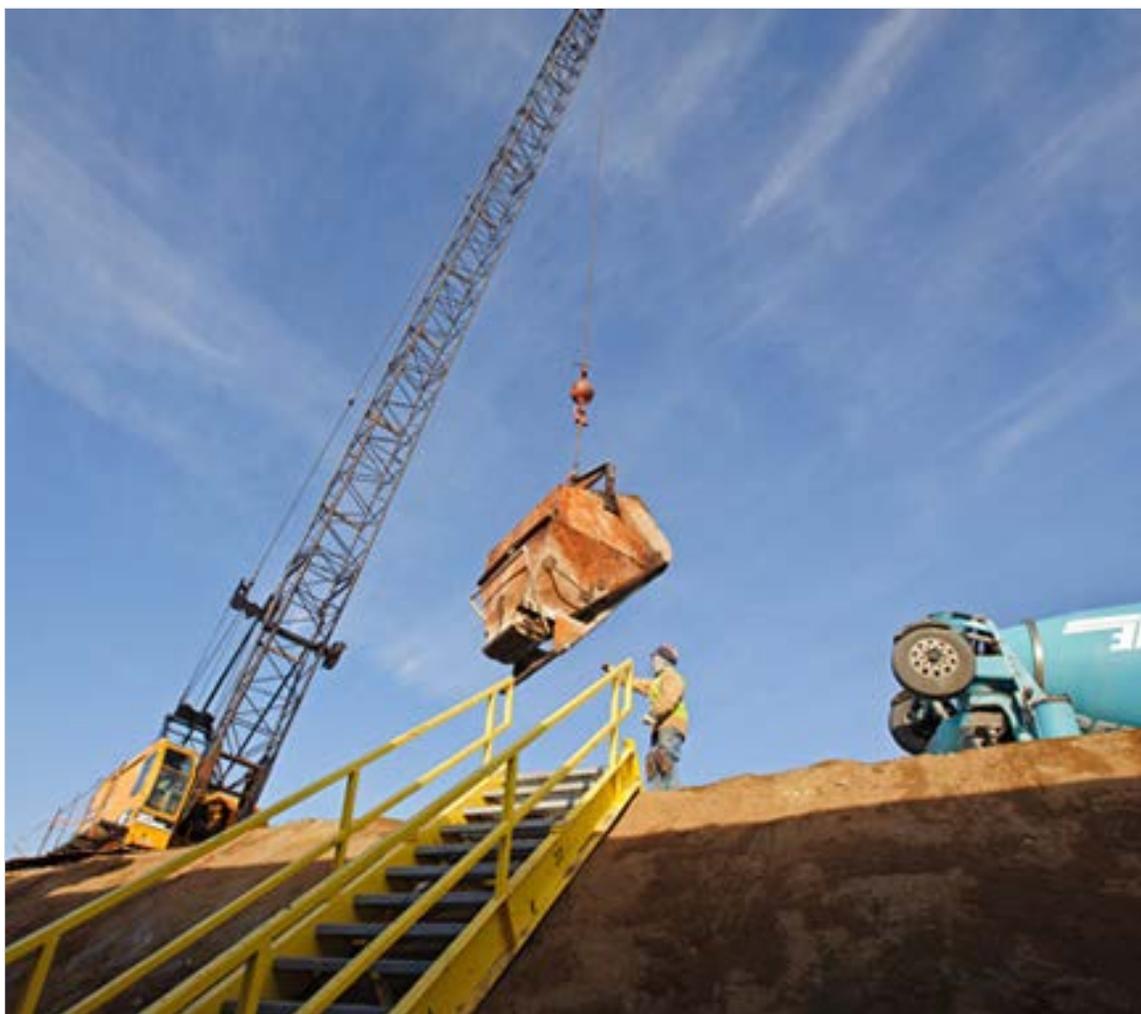




# Targeted Group Business and Veteran-Owned Small Business Programs

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# Legislative request

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This report is issued to comply with Minn. Stat. 161.321, subdivision 8.

## Reporting

(a) The commissioner shall report to the commissioner of administration on compliance with this section. The information must be reported at the time and in the manner requested by the commissioner of administration.

(b) By February 1 of each even-numbered year, the commissioner of transportation shall submit a report to the chairs and ranking minority members of the legislative committees with jurisdiction over transportation policy and finance and Veterans policy and finance concerning contract awards during the preceding biennium under this section. At a minimum, the report must include:

(1) a summary of the program;

(2) a review of the use of preferences for contracting during the preceding biennium, including frequency of establishment of a preference and frequency and amount of contract awards to:

(i) small targeted group businesses; and

(ii) Veteran small businesses;

(3) a review of goals and good faith efforts to use small targeted group businesses and Veteran small businesses in subcontracts, including analysis of methods used for, and effectiveness of, good faith efforts;

(4) a summary of any financial incentives used or sanctions imposed;

(5) agency commentary on any perceived impediments, whether statutory, administrative, or otherwise, that may be limiting the participation of small targeted group businesses and Veteran small businesses in the agency's contract preference program;

(6) information on each reevaluation under subdivision 4a, including details on the methodology for reevaluation; and

(7) any recommendations for legislative or programmatic changes.

The cost of preparing this report is under \$5,000.

# Overview

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The Targeted Group Business and Veteran Small Business contracting programs are part of MnDOT's overall initiative to increase small business participation on state-funded highway construction projects. The Disadvantaged Business Enterprise program serves a similar purpose for federally-funded projects and is not included in this report.

The TGB and Veteran contracting programs provide certified targeted group businesses and verified veteran small businesses increased access to state contracting opportunities.

Both of these programs have two primary mechanisms of action:

- Bid preferences for TGB and Veteran businesses bidding as prime contractors
- Participation goals for TGB and Veteran business subcontractors

The TGB and Veteran programs do not apply to federally-funded projects. Instead, the federal Disadvantaged Business Enterprise program applies to these projects.

## Program History

The program for veteran-owned small businesses was enacted in 2010.

Statutory provisions governing the Targeted Group Business program for state-funded construction projects were revised in 2012. MnDOT began establishing subcontract goals for targeted group businesses in January 2013, with goals applied to state-funded projects advertised for letting in March 2013.

## Program Eligibility

Eligibility requirements for both programs are established pursuant to Minn. Stats. 16C.16, 161.321 and Minn. Rules Parts 1230.1600-1820.

### TGB Eligibility

The TGB program is only available to Minnesota-based small businesses. The definition of a small business is established by Department of Administration and varies by industry. For some industries the size limit is \$1 million in annual gross sales, while in others it may be \$10 million or more.

In addition to being a Minnesota-based small business, eligibility for MnDOT's TGB program requires the business to be certified as a targeted group business by the Department of Administration. To qualify, the business must be 51 percent owned and

operated by women, persons with a substantial physical disability, or specific minorities as determined by the Commissioner of Administration.

To participate in the TGB program, a business must be certified at the time the bid is submitted.

Rules regarding eligibility and the designation of targeted group businesses are established by the commissioner of the Minnesota Department of Administration and can be found at Minn. Rules Parts 1230.1600-1820. Contract qualifications and other contract requirements still apply.

### **Veteran Eligibility**

The Veteran Small Business program applies to state-funded MnDOT highway construction projects. Veteran-owned small businesses are eligible for the Veteran program if they are verified by the U. S. Department of Veterans Affairs. The program includes contract preferences for Veteran firms bidding as prime contractors as well as subcontract participation goals for Veteran small businesses.

# Contracting Preference

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Both the TGB and Veteran programs offer a contracting preference in the form of an amount applied to a bid for the sole purpose of evaluating proposals. Under these programs, TGB and Veteran small businesses who bid as prime contractors and request a preference will receive a preference of up to 6 percent of the amount of their bid for the first \$1 million, not to exceed \$60,000. This preference amount is subtracted from the TGB or Veteran's bid proposal, and then the reduced amount is used to determine the low bid. This preference is used only to determine the low bid; it is not used to determine the contract award amount or payment due to the contractor under the contract.

To receive a preference under the TGB or Veteran program, the prime contractor must be a certified TGB or a verified veteran-owned small business.

Contract qualifications and other contract requirements still apply.

## **TGB Contracting Preferences**

### **2013 TGB Contracting Preferences**

During the 2013 calendar year, 93 state-funded MnDOT projects were subject to a TGB preference. One TGB prime contractor received the TGB preference in 2013.

### **2012 TGB Contracting Preferences**

During the 2012 calendar year, there were no state-funded MnDOT projects with TGB participation goals or preferences. Implementation of the TGB program began in January 2013.

## **Veteran Contracting Preferences**

### **2013 Veteran Contracting Preferences**

During the 2013 calendar year, 138 state-funded MnDOT projects were subject to a Veteran preference. One Veteran prime contractor received the Veteran preference in 2013.

### **2012 Veteran Preferences for Contracting**

During the 2012 calendar year, 130 state-funded MnDOT projects were subject to a Veteran preference. One Veteran prime contractor received the Veteran preference in 2012.

# Goals and Good Faith Efforts

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## **Goals for Subcontractor Participation**

MnDOT establishes numerical goals for TGB and Veteran subcontractor participation on state-funded highway construction projects. Contracts less than \$250,000 typically are assigned a goal of zero percent. Each project includes both TGB and Veteran subcontractor goals based on the availability of TGB and Veteran-owned small businesses to do the work. A goal of zero percent may be assigned if a project has no significant subcontracting opportunities for TGB and Veteran businesses. There are no overall participation goals for either program.

The apparent low bidder on a contract must meet applicable TGB and Veteran subcontractor goals or make adequate good faith efforts to meet the goals by demonstrating that TGB or veteran businesses were not reasonably available. Apparent low bidders who do not meet these requirements will not be awarded the contract.

All bidders on state-funded MnDOT highway construction projects must state their commitment to use TGB and Veteran-owned small businesses in their bid documents. These documents are evaluated at the time of bid.

## **Enforcement**

### **Good Faith Efforts Reconsideration**

Apparent low bidders who do not meet TGB or Veteran subcontractor goals, or who do not show adequate good faith efforts to meet the goal(s) are not awarded the contract. However, the apparent low bidder can request an administrative review of this determination.

An administrative review is an informal hearing before a reconsideration panel comprised of MnDOT managers and other staff who were not involved in the initial decision. The panel reviews the decision to ensure it was reasonable.

In 2012 and 2013 there were no administrative reconsiderations for the TGB or Veteran programs.

### **Financial Incentives**

Minn. Stat. 161.321 allows for the establishment of financial incentives for prime contractors who exceed the TGB or Veteran subcontractor goals for a project. At this time MnDOT's programs do not provide for financial incentives.

### **Sanctions**

If a contractor does not fulfill TGB and Veteran subcontracting commitments, the contractor may be subject to appropriate administrative sanctions. Sanctions may include, but are not limited to, MnDOT withholding progress payments and monetary deductions from the contract proceeds.

In 2012 and 2013 there were no sanctions imposed for failure to fulfill TGB or Veteran subcontracting commitments.

## **Re-evaluation**

The TGB and veteran programs are both relatively new programs. MnDOT will cooperate with the Department of Administration to periodically re-evaluate these programs when applicable.

## **TGB Contract Goals**

The majority of MnDOT contracts are awarded to TGB firms through the establishment of subcontractor participation goals. These goals are attained by subcontracting with eligible TGB firms, leasing equipment from eligible TGB firms, entering into a joint venture with eligible TGB firms or purchasing materials and supplies from eligible TGB firms. Generally, 60 percent of a supplier's contracted amount will be credited toward the TGB small business subcontractor goals.

### **2013 TGB Contract Goals**

During calendar year 2013, 93 state-funded MnDOT projects included TGB participation goals. The total value of these projects was \$153,421,983. Of these projects:

- 22 projects had a goal of zero percent because they were identified as having no significant subcontracting opportunities for TGB firms
  - Despite a goal of zero, TGB firms participated on three of these projects.
- 71 projects had a TGB subcontractor goal above zero
  - 59 projects with a goal greater than zero met or exceeded goals
- 141 contracts with a total value of \$8,239,228 were awarded to TGB firms

Detailed project information is attached as Appendix A.

### **2012 TGB Contract Goals**

No projects had TGB participation goals in 2012 because the TGB program was still under development.

## **Veteran Contract Goals**

The majority of MnDOT contracts are awarded to Veteran small businesses through subcontractor participation goals for highway construction contracts. The goals are attained by subcontracting with eligible Veteran businesses, leasing equipment from eligible Veteran businesses, entering into a joint venture with eligible Veteran businesses, and purchasing materials and supplies from eligible Veteran businesses. Generally, 60 percent of a supplier's contracted amount will be credited toward the veteran small business subcontractor goals.

### **2013 Veteran Contract Goals**

During the 2013 calendar year, 138 state-funded MnDOT projects had veteran small business participation goals. The total value of these projects was \$187,621,129. Of these projects:

- 67 projects had a goal of zero percent because they were identified as having no significant subcontracting opportunities for veteran-owned small businesses
- 71 projects had a goal above zero
  - 53 projects with a goal greater than zero met or exceeded their goal
  - 117 contracts with a total value of \$3,664,879 were awarded to Veteran-owned small businesses

Detailed project information is attached as Appendix B.

### **2012 Veteran Contract Goals**

During the 2012 calendar year, 130 state-funded MnDOT projects had Veteran small business participation goals and were subject to a Veteran preference. The total value of these projects was \$210,648,038. Of the 130 projects with a Veteran subcontracting goal:

- Seven projects included a goal of zero percent because they were identified as having no significant subcontracting opportunities for Veteran businesses
- 123 projects had a goal above zero
  - 74 projects met or exceeded their goal
  - 153 contracts with a total value of \$4,696,821 were awarded to Veteran-owned small businesses

Detailed project information is attached as Appendix C.

# Program Implementation and Considerations

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## **MnDOT Efforts to Increase TGB and Veteran Participation**

MnDOT's efforts to increase TGB and Veteran business participation fall within three major categories:

- Business development for TGB and Veteran-owned small businesses to develop the business skills needed to successfully bid for and be awarded work on MnDOT projects
- Education for all contractors about the TGB and Veteran programs to ensure prime contractors and subcontractors understand the TGB and Veteran programs
- Outreach to identify small businesses who meet the criteria to participate in the TGB and Veteran programs and promote expansion of firms participating in the program

Within these categories, MnDOT has done the following to increase participation by TGB and Veteran businesses:

- Consider recommendations from TGB and Veteran businesses, including project teams of the DBE and Workforce Development Collaborative
- Assess the effectiveness of different project management approaches for increasing TGB and Veteran participation as prime contractors or subcontractors
- Train TGB and Veteran businesses on the use of Bid Express, MnDOT's electronic procurement tool
- Sponsor training workshops throughout the state to promote the TGB and Veteran programs
- Retain ~~the~~ Procurement Technical Assistance Center as a marketing and outreach consultant to identify eligible small businesses and assist them in the TGB application process
- Retain Duff Consulting to identify veteran-owned small businesses and assist them through the application process.
- Hire personnel specifically to develop, implement and administer the TGB program
- Simplify solicitations by combining TGB special provisions, Veteran special provisions and related forms
- Prepare TGB and Veteran special provisions specifically for state-funded professional/technical consultant service contracts to be implemented in early 2014.

## **Program Outlook**

The TGB and Veteran business programs are relatively new in MnDOT's highway heavy construction program. One challenge to participation by TGB and Veteran businesses is the limited number of firms that bid as prime contractors or subcontractors on MnDOT highway construction projects. MnDOT is actively working with the contracting community to increase the number of small businesses participating on MnDOT highway construction projects through a variety of efforts, including those listed above.

The certification process for the Veteran program is administered by the U. S. Department of Veterans Affairs. Therefore, expansion of the pool of certified Veteran businesses is subject to this federal process. MnDOT was informed the process can be long and difficult, so MnDOT hired consultants to assist with the certification application process.

Finally, the scope of the TGB and Veteran programs is currently limited to state-funded highway construction projects let by MnDOT. In 2014, MnDOT will expand the program to include its professional/technical projects to provide additional opportunities to TGB and Veteran firms.

## **Recommendations**

The TGB and Veteran contracting programs are a critical part of the MnDOT initiative to increase small business participation on state-funded highway construction projects. Expanding access to MnDOT contracting opportunities is a powerful small business tool. Each percentage increase in contracts with small businesses reflects millions of dollars flowing to Minnesota's small businesses. Continued support for these and other small business initiatives will help Minnesota's small businesses grow and prosper as crucial contributors to job creation and economic vitality.

MnDOT has no recommendations at this time since implementation of these programs is just now fully under way