

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS

PURPOSE

These provisions (1) provide an explanation of the federal law and information regarding compliance with the DBE requirements applicable to this contract, (2) explain the process MnDOT will follow to evaluate bidders' efforts to obtain DBE participation, (3) provide the standards MnDOT will use to measure compliance with these requirements, and (4) identifies sanctions.

POLICY STATEMENT

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

MnDOT has received federal financial assistance from DOT for this contract, therefore the DBE requirements of 49 C.F.R. §26 apply to this contract. As a condition of receiving this assistance, MnDOT has provided assurance it will comply with the 49 C.F.R. §26. This regulation requires that contractors take necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform this contract. These special provisions provide detailed information about these requirements, and identify the responsibility the contractor has to demonstrate compliance with the requirements.

CONTRACT ASSURANCE

The contractor, and its subcontractor(s), shall not discriminate on the basis of sex, color, race or national origin in the performance of this contract. The contractor agrees to act in accordance with applicable requirements of 49 C.F.R. §26 in the execution and award of this contract. Failure by the contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as MnDOT deems appropriate.

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BASIC REQUIREMENT

In order to be awarded this contract, the Apparent Low Bidder (ALB) must establish either (1) that it has met the DBE participation goal of the contract; or (2) that it has made adequate good faith efforts (GFE) to meet the DBE goal. This requirement is in addition to all other pre-award requirements.

DBE GOAL OF THIS CONTRACT

The DBE goal on this contract is ___ percent.

METHODS TO ATTAIN THE GOAL

The goal may be attained by:

1. Subcontracting with a DBE certified by the Minnesota Unified Certification Program (MnUCP). To prove the existence of such a subcontract, the Apparent Low Bidder (ALB) shall submit a signed agreement or a signed affidavit committing it to enter into such a subcontract;
2. Leasing equipment from a MnUCP-certified DBE;
3. Entering into a joint venture with a MnUCP-certified DBE. This joint venture must be approved in writing by the MnDOT Office of Civil Rights prior to bid opening;
4. Purchasing materials and supplies from a MnUCP-certified DBE. Generally, sixty percent (60%) of the supplier's contracted amount will be credited toward the DBE goal; however 100% of the amount will be credited towards the DBE goal if the supplies or materials are obtained from a MnUCP -certified DBE manufacturer; or
5. Using other services as approved in writing by the MnDOT Office of Civil Rights prior to bid opening.

SOLICITING DBEs

All bidders should make every reasonable effort to subcontract work to DBEs through good faith negotiations and solicitations in advance of the dates specified for submitting and opening of bids.

In order to fulfill a DBE goal, the firms utilized as DBE subcontractors or suppliers must be certified as DBEs by the MnUCP **prior to the date of the bid opening**. The MnUCP DBE directory, which is found on MnDOT's Office of Civil Rights website, includes the names and addresses of all certified DBE firms. To be listed in the DBE directory, a DBE needs only to be certified as a DBE by the MnUCP. Neither MnDOT nor the MnUCP makes any representation as to any DBE's technical or financial ability to perform the work. Prime contractors are solely responsible for performing due diligence in hiring DBE subcontractors. A DBE subcontractor's

failure to perform the work will not be considered justification for a compensation increase.

APPARENT LOW BIDDER (ALB) SUBMITTAL OF INFORMATION

The ALB must identify the efforts it made to meet the DBE goal. The ALB must submit the information described in this section to the MnDOT Office of Civil Rights. All bidders are required to thoroughly document these solicitation efforts. The ALB shall justify any bids, quotes, or proposals it rejects from properly certified, qualified DBE firms.

THE FOLLOWING INFORMATION MUST BE SUBMITTED ON THE SUBMISSION DUE DATE. The Submission Due Date is the fifth calendar day after the bid letting date, unless the MnDOT Director of the Office of Civil Rights grants a written extension for good cause shown. The five day period starts the calendar day following the bid letting date. Information sent by fax or personal delivery must be received by the MnDOT Office of Civil Rights no later than 4:30PM central time on the Submission Due Date. Information sent by U.S. mail must be postmarked no later than the Submission Due Date. **FAILURE TO SUBMIT ALL REQUIRED INFORMATION WITHIN THE ALLOWED FIVE CALENDAR DAY PERIOD WILL RESULT IN REJECTION OF YOUR BID ON THE BASIS THAT YOU ARE NOT A RESPONSIBLE BIDDER. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.**

The ALB must either (1) identify DBE participation sufficient to meet the DBE goal; or (2) demonstrate that the ALB made adequate good faith efforts to meet the DBE goal. The ALB must submit the following documents to the MnDOT Office of Civil Rights:

1. Certificate of Good Faith Efforts Consolidated Form (GFE Consolidated Form)
2. DBE Description of Work and Field Monitoring Report (Exhibit A)
3. Supporting Documentation to Verify Good Faith Efforts

The ALB must complete and submit the attached **Certificate of Good Faith Efforts Consolidated Form** as stated in the form instructions.

Part A - The ALB must provide contact information.

Part B - The ALB must provide project information including the DBE goal and the amount of DBE commitment the ALB obtained.

Part C - The ALB must provide information stating the amount of self-performance and DBE and non-DBE subcontractors' participation in this contract.

Part D - The ALB must list each subcontractor it solicited. The information must include all DBE and non-DBE firms (including all subcontractors, service providers and suppliers) from whom the ALB solicited quotes to provide work and supplies for this contract. Part D must be completed only if the ALB did not obtain sufficient DBE participation to meet the DBE goal.

Part E - The ALB must list the DBE firms that it intends to use on this contract and provide an Exhibit A form and quote.

- Part F - The ALB must list all non-DBE firms that provided a quote and indicate whether the non-DBE quote was accepted.
- Part G - The ALB must list DBE firms that provided a quote but were not selected. Part G must be completed only if the ALB did not obtain sufficient DBE participation to meet the DBE goal.
- Part H - The ALB must complete this Good Faith Efforts Affidavit regardless of whether the ALB's list of proposed subcontractors, service providers, and suppliers shows sufficient DBE participation to meet the DBE goal set for this contract.

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

The ALB must submit information that demonstrates its adequate good faith efforts to achieve the DBE goal. This information can include, but is not limited to, copies of solicitation letters, faxes, and emails to DBE firms. The ALB must identify the actions it took to achieve the DBE goal, including those actions listed in 49 C.F.R. § 26 Appendix A.

FAILURE TO SUBMIT INFORMATION

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

GOOD FAITH EFFORTS – GOAL NOT MET

IF THE DBE GOAL IS NOT MET, A GOOD FAITH EFFORTS REVIEW WILL BE CONDUCTED

An ALB that does not commit to meeting the DBE goal is thereby not disqualified if the ALB demonstrates that it made adequate good faith efforts (GFE) to meet the DBE goal. An ALB that does not commit to meet the DBE goal and fails to show adequate GFE were made is a non-responsible bidder and MnDOT will reject its bid. See 49 C.F.R. §26.53(a)(2).

A DBE firm that bids as a prime contractor will be deemed to have met the DBE goal if the value of the work performed by its own forces, combined with any work that it has committed to be performed by DBE subcontractors and DBE suppliers, meets or exceeds the DBE goal. See 49 C.F.R. §26.53(g).

In addition to the GFE activities listed in the following section, MnDOT may, as permitted by the Federal regulations, take into account the performance of other bidders in meeting the DBE contract goal. See 49 C.F.R. §26 Appendix A(V).

EVALUATION OF GOOD FAITH EFFORTS

If an ALB has a DBE commitment rate that is below the DBE goal, then the ALB must demonstrate that it made adequate good faith efforts in attempting to meet the DBE goal. MnDOT's Office of Civil Rights (OCR) staff will review the GFE documents submitted by the ALB and the DBE commitment submitted by each bidder to evaluate the ALB's commitment rate.

The ALB must show that it took all necessary and reasonable steps to achieve the DBE goal 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. In evaluating the ALB's adequate good faith efforts, MnDOT will consider the following list of actions. This is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. Compliance with the adequate good faith efforts requirement will be determined on a case-by-case basis.

- A. 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 ALB 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.
- B. 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.
- C. 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.
- D(1). Negotiating in good faith with interested DBEs. It is the ALB'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.

- D(2). An ALB 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 a 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 ALB of the responsibility to make the good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. 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.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Following this review, the OCR staff will make a recommendation to the Director of OCR, or designee, (Director) as to whether the ALB has met the DBE goal or made adequate good faith efforts. The Director of OCR will determine whether the ALB has met the DBE goal or made adequate good faith efforts to meet the goal for this contract in accordance with 49 C.F.R. §26.53 and 49 C.F.R. §26 Appendix A. The Director's written determination will be mailed to the ALB informing it of this decision approximately 10-12 business days after the Submission Due Date. If the Director determines that the ALB failed to meet the DBE goal or that it failed to make adequate good faith efforts to do so, the determination notice will be sent by certified U.S. mail.

An ALB that fails to meet the DBE goal or fails to make adequate good faith efforts to meet the goal is a non-responsible bidder and shall not be awarded the contract.

ADMINISTRATIVE RECONSIDERATION

If the Director determines that the ALB failed to make adequate good faith efforts, the ALB may request administrative reconsideration. (49 C.F.R. § 26.53(d)). If the ALB does not make a timely written request for administrative reconsideration as described herein, the ALB will be deemed to have waived its right to request administrative reconsideration.

The ALB's request for administrative reconsideration must be made in writing. Requests sent by fax or personal delivery must be received by the MnDOT Office of Civil Rights no later than 4:30 PM on the fifth business day after the ALB receives written notice of the determination. Administrative reconsideration requests sent by U.S. mail must be postmarked no later than the fifth business day after the ALB receives notice of the determination. The ALB is deemed to have notice as of the date indicated on the certified mail receipt signed by the ALB, or its representative, at the time of delivery. The ALB must submit the written request for reconsideration to the attention of **MnDOT Deputy Commissioner at MnDOT, 395 John Ireland Blvd. St. Paul, Minnesota 55155; or by fax 651-366-4795. A copy of the request must be sent to the Director of the Office of Civil Rights at the same address or fax 651-366-3129.**

The MnDOT Deputy Commissioner, or a designated official, will serve as the Reconsideration Official. The Reconsideration Official shall not have any role in the original determination that the ALB failed to meet the DBE goal or failed to make adequate good faith efforts to do so.

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

- Provide written documentation or argument concerning the issue of whether the ALB met the goal or made adequate good faith efforts to do so. (49 C.F.R. § 26.53(d)(1).
- Meet in person with the Reconsideration Official to discuss the issue of whether the ALB met the goal or made adequate good faith efforts to do so. (49 C.F.R. §26.53(d)(3).

The Reconsideration Official will reconsider the record documenting the good faith efforts of the ALB. The reconsideration process will include the documents and arguments that the ALB is permitted to submit. The reconsideration process is a review of only the good faith efforts made by the ALB as of the Submission Due Date. Good faith efforts made subsequent to that date will not be considered.

MnDOT will provide the ALB with a written decision on reconsideration, explaining the basis for the determination **within 5 business days following the date scheduled for the ALB to meet with the Reconsideration Official to discuss the issue.** In accordance with 49 C.F.R. §26.53(d)(5), the result of MnDOT's reconsideration process is not subject to administrative appeal to the U.S. Department of Transportation.

COUNTING DBE PARTICIPATION & COMMERCIALY USEFUL FUNCTION

In accordance with 49 C.F.R. §26.55, MnDOT will determine the percentage of DBE participation that will be counted toward the overall DBE goal as follows:

- (a) When a DBE participates in a contract, MnDOT will only count the value of the work actually performed by the DBE toward DBE goals.
 - 1. The entire amount of the portion of a construction contract (or other contract not covered by paragraph 49 C.F.R. §26.55(a)(2)) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - 2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, counts toward DBE goals, provided that MnDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontract work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, MnDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) MnDOT will count expenditures of a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
 - 1. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, MnDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and DBE credit claimed for its performance of the work, and other relevant factors.

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, MnDOT must examine similar transactions, particularly those in which DBEs do not participate.
 3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MnDOT must presume that it is not performing a commercially useful function.
 4. When a DBE is presumed not to be performing a commercially useful function as provided in the preceding paragraph, the DBE may present evidence to rebut this presumption. MnDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 5. MnDOT decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to U.S. DOT.
- (d) MnDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of the meeting DBE goals.
 2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the Director of the Office of Civil Rights.

6. For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) MnDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

1. MnDOT will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer.

2. For purposes of this section (e), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described in the specifications.

3. If the materials or supplies are purchased from a DBE regular dealer, MnDOT will count 60% of the cost of the materials or supplies toward DBE goals.

4. For purposes of this section (e), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold to or leased to the public in the usual course of business.

- A. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

- B. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in 49 C.F.R. §26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- C. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section (e).

5. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided MnDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MnDOT, however, will not count any portion of the cost of the materials or supplies

themselves toward DBE goals.

- (f) If a firm is not currently certified as a DBE in accordance with the standards of 49 C.F.R. §26 Subpart D at the time of execution of the contract, MnDOT will not count the firm's participation toward any DBE goals.
- (g) The dollar value of the work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
- (h) MnDOT will not count the participation of a DBE subcontractor toward the contractor's final compliance with its DBE obligations on a contract until the amount being counted has been actually paid to the DBE.

FAILURE TO FULFILL DBE COMMITMENT

MnDOT will invoke appropriate administrative sanctions for non-compliance when a contract has been awarded and performance has begun, but the contractor fails to meet the DBE goal or make an adequate good faith effort to do so. Sanctions for noncompliance may include, but are not limited to, MnDOT withholding progress payments and taking a monetary deduction from the contract proceeds. If the contractor fails to complete its work on the contracts executed with DBE firms, as required by this contract, and the failure is through no fault of the DBE firms, MnDOT may deduct a sum equal to the portion of the DBE commitment not fulfilled. This provision will not apply if MnDOT reduces the quantity of work subcontracted to the DBE.

MnDOT may allow an adjustment of the commitment if the DBE participant that was part of the original commitment fails to perform and cannot be replaced with another DBE subcontractor despite the contractor's adequate good faith efforts to find another DBE to perform the same amount of work.

DBE REPLACEMENT

The contractor must make good faith efforts to replace a DBE subcontractor who is unable to perform successfully with another DBE to perform the same amount of work. The contractor shall not terminate for its convenience a DBE subcontract and then perform the work of the terminated subcontract with its own forces.

Once a contractor submits an affidavit, subcontract or other signed agreement, and the DBE Description of Work and Field Monitoring Report (Exhibit A), the DBE firm cannot be replaced by another DBE or a non-DBE firm for any reason until the following occurs:

1. MnDOT's Office of Civil Rights receives a written request for approval of the substitution, including the reasons for the substitution; and,

2. MnDOT's Office of Civil Rights grants the contractor a written approval of the substitution.

MnDOT staff may assist the Contractor, when requested, in replacing DBEs. This assistance may include but is not limited to:

1. Providing the contractor with information regarding the availability of other DBEs.
2. Providing the contractor with assistance in locating available DBEs

PROMPT PAYMENT

Minnesota Statutes §16A.1245 requires that the prime contractor agrees to pay each subcontractor within ten (10) days of the prime contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The prime contractor is subject to pay interest charges of 1-1/2 percent per month, or any part of a month, to the subcontractor on any undisputed amount not paid to the subcontractor within the ten (10) day period. This provision applies to DBE and non-DBE subcontractors.

Prime contractors are required to make prompt and full payment of any retainage kept by the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Satisfactorily completed means when all the tasks called for in the subcontract have been accomplished and documented as required by MnDOT. When MnDOT has made incremental acceptances of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed. See 49 C.F.R. §26.29(b) and (c).

Failure to comply with these payment provisions may result in penalties including the withholding of progress payments to prime contractors. Appropriate penalties will be determined by MnDOT. The Contractor Payment Form must be completed for payments to subcontractors regardless of their DBE status.



Prime Contractor _____ State Project # _____

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

A contract will not be awarded to the Prime Contractor unless this form is submitted with a signed subcontract, purchase order or affidavit for each DBE participating in the contract. This form is complete when the DBE subcontractor has filled in **all of the applicable information in sections A and B and signs in section C.**
PLEASE PRINT CLEARLY OR TYPE.

Section (A): (All DBE Subcontractors, including Trucking firms must complete this Section.)

MUST BE COMPLETED BY THE DBE PRINCIPAL

Letting Date: _____ State Project Number: _____

Prime Contractor: _____ Phone #: _____

DBE Subcontractor: _____ Phone #: _____

DBE Principal Name: _____ Total Subcontract \$: _____

DBE Participation Claimed: Percent _____% Amount \$ _____

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

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

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

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



Certificate of Good Faith Efforts Consolidated Form (GFE Form)
Instructions

This form consolidates the Certificate of Good Faith Efforts, the Good Faith Efforts Affidavit, and the Bidders List in the DBE Special Provisions and is referred to as the GFE Consolidated form. All parts of this form must be completed unless otherwise stated in the section's heading. The Apparent Low Bidder (ALB) must complete this form and submit it with the Good Faith Efforts Information by the Submission Due Date as defined in the DBE Special Provisions. Prime contractors may also use this form to demonstrate good faith efforts when a DBE is replaced after the contract is awarded.

The ALB should include in its Good Faith Efforts Information a cover letter addressed to the Mn/DOT Office of Civil Rights. The cover letter should identify in detail the efforts the ALB made to meet the DBE goal. The ALB is required to thoroughly document its solicitation efforts and justify any bids, quotes or proposals it rejects from properly certified DBE firms. **THE COVER LETTER SHOULD INCLUDE EACH OF THE FACTORS IDENTIFIED IN 49 C.F.R. Part 26, App. A, SUMMARIZED AS FOLLOWS:**

1. This GFE Consolidated Form must be completed. Please note that **“Part D - SOLICITATION OF SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS” on pg. 4, and “Part G – DBES QUOTED BUT NOT SELECTED” on pg. 7 are to be completed ONLY IF the DBE goal is NOT met.**
2. A statement of the ALB's overall plan for obtaining DBE participation noting barriers or challenges the ALB encountered in obtaining DBE participation. Specifically, detailing how all necessary and reasonable steps to achieve the DBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective of achieving the DBE goal, could reasonably be expected to obtain sufficient DBE participation - even if the ALB was not successful.
3. **The solicitation requirement is two-fold and includes the *initial solicitation and appropriate follow up with interested DBEs.*** Evidence of solicitation efforts of DBEs such as copies of requests for bids sent to DBE firms with identification of the firms clearly stated; fax confirmation sheets displaying the date, fax number, name of DBE firm, and status; list of all DBE firms called, date, contact name and response; or email distribution lists with date and time clearly indicated. The solicitations to DBEs should provide sufficient information about the type of work available on the project.
4. Identify the efforts made to select portions of work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.
5. A detailed explanation of the reason for not accepting DBE quotes. Each non-accepted quote should be addressed individually. Provide an explanation of the efforts the ALB made to negotiate in good faith with interested DBEs. Provide information about any cost comparisons that were considered in the decision to not accept DBE quotes. **The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for an ALB's failure to meet the contract DBE goal, as long as such costs are reasonable.** The ALB is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. If the ALB makes such a determination it should provide a written explanation for this conclusion.
6. A detailed explanation of the ALBs efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. A detailed explanation of the ALBs efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
8. A detailed explanation of the effective use by the ALB of the services of available minority/women community organizations; minority/women contractor's groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. Provide copies of any advertisements placed on hardcopy or websites. Advertisements should include information about the project(s), type(s) of work for which quotes are being solicited, and specific contact information for the ALB.

Contact the MnDOT Office of Civil Rights if you have any questions; main line 651-366-3073



Guidelines for Certificate of Good Faith Efforts (GFE) Consolidated Form

The Apparent Low Bidder (ALB) must show that it took all necessary and reasonable steps to achieve the DBE goal which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. The criteria for evaluating good faith efforts is described in 49 CFR, Part 26, Appendix A which can be found at <http://www.osdbu.dot.gov/DBEProgram/>. ALBs submitting good faith efforts information should address the following factors in its Good Faith Efforts Information submission. The information below is not a mandatory list, nor is it exclusive or exhaustive.

Criteria 1: "Solicitation Efforts"

1. Did the ALB use the current DBE Directory to identify DBEs?
2. Did the ALB perform sufficient solicitations given the amount of work to meet the DBE goal?
3. Did the ALB break out and solicit for work in economically feasible units?
4. Did the ALB solicit for work that it otherwise would self-perform?
5. Were DBEs with business operations in close geographic proximity to the project solicited?

Criteria 2: "Timely Notice"

1. Did the ALB send timely written (e-mail/fax) solicitation notices to certified DBE firms?
2. Did the solicitation notice include the following:
 - a. Name and location of project
 - b. Bid date
 - c. Scope of work requested
 - d. Location where DBE's can review plans and specifications
 - e. Date and time to submit quote
 - f. Contact name for technical assistance
 - g. Any special requirements

Criteria 3: "Finance and Bonding Outreach"

1. Did the ALB offer assistance by providing contacts for possible bonding, insurance, and lines of credit?
2. Did the ALB offer assistance by providing technical assistance in these areas?

Criteria 4: "ALB follow-Up"

1. Did the contractor maintain a "follow-up log" from the initial solicitation? The log must show:
 - a. Type of contact (fax, telephone, e-mail)
 - b. Name of contact person
 - c. Name of DBE firm
 - d. Date and time of DBE contacted
 - e. Response received
 - f. Reason for DBE not bidding project (if applicable)

Criteria 5: "ALB DBE Program Outreach and Support"

1. Did the ALB host DBE informational workshops, attend Minnesota Department of Transportation (Mn/DOT) sponsored DBE events; such as networking sessions, DBE conferences, DBE/ALB meetings, etc.?
2. Did the ALB contact minority business organizations about DBE opportunities?

Note: The Submission Due Date is **the fifth calendar day after the bid letting date** in accordance with the Mn/DOT DBE Special Provisions. Contact the Mn/DOT Office of Civil Rights if you have any questions; main line 651-366-3073

**MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS
CERTIFICATE OF GOOD FAITH EFFORTS CONSOLIDATED FORM**

This Certificate of Good Faith Efforts Consolidated form (GFE Consolidated form) is required to demonstrate that the Apparent Low Bidder (ALB) either met the DBE goal, or made adequate good faith efforts to meet the DBE goal pursuant to 49 C.F.R. Part 26, Appendix A. Please refer to the instruction sheet prior to completing the form. This form and all supporting Good Faith Efforts documentation must be provided to the Mn/DOT Office of Civil Rights prior to the Submission Due Date as defined within the DBE Special Provisions.

PART A – PRIME CONTRACTOR’S INFORMATION (All Primes complete this section.)				
COMPANY NAME				
ADDRESS	STREET	CITY	STATE	ZIP CODE
PHONE #	FAX #	EMAIL ADDRESS		
CONTACT PERSON			TITLE	

PART B - PROJECT DESCRIPTION (All Primes complete this section.)				
STATE PROJECT #		CONTRACT # (If Applicable)		△Attach copy of Mn/DOT Advertisement
ANTICIPATED START DATE (Based on progress schedule)			EXPECTED COMPLETION DATE (Based on progress schedule)	
DBE GOAL	%	VS	DBE COMMITMENT	(Type of GFE Information – Check one only) Pre-award Post-award/Execution
TOTAL DBE PARTICIPATION DOLLARS BASED ON ADVERTISED DBE GOAL (Total prime bid \$ * DBE % Goal)				

PART C – PROJECT SUMMARY AMOUNTS (All Primes complete this section.)	
TOTAL PRIME BID	\$
TOTAL DOLLARS COMMITTED TO NON-DBE’S (Not including suppliers)	\$
TOTAL DOLLARS COMMITTED TO DBE’S (Not including suppliers)	\$
TOTAL DOLLARS COMMITTED TO DBE SUPPLIERS (Total paid to DBE suppliers 60%)	\$
WORKED PERFORMED BY PRIME	\$
PERCENT OF WORK PERFORMED BY PRIME	%
TOTAL DBE PARTICIPATION REMAINING (Difference between DBE goal \$ and DBE commitment \$)	\$

PART D - SOLICITATION OF SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS (Complete this part only if DBE goal is not met)

List all subcontractors solicited, both DBE and non-DBE contractors, truckers and suppliers for this specific project. Include initial contact and follow-up dates, as well as methods of contact (Phone, Fax, Email, etc.).

The good faith effort submission should include evidence of the solicitation effort such as, copies of request for bids sent to DBE firms with the name of the DBE firms clearly identified, fax confirmation sheets showing the date, fax number, name of DBE firm, confirmation the fax was sent, list of all DBE firms called time of call, person contacted and response, or email lists with time/day sent clearly indicated etc.

Subcontractor/Supplier/Service provider	DBE?		Phone #	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No		DATES	METHODS		
1	<input type="checkbox"/>	<input type="checkbox"/>					
2	<input type="checkbox"/>	<input type="checkbox"/>					
3	<input type="checkbox"/>	<input type="checkbox"/>					
4	<input type="checkbox"/>	<input type="checkbox"/>					
5	<input type="checkbox"/>	<input type="checkbox"/>					
6	<input type="checkbox"/>	<input type="checkbox"/>					
7	<input type="checkbox"/>	<input type="checkbox"/>					
8	<input type="checkbox"/>	<input type="checkbox"/>					
9	<input type="checkbox"/>	<input type="checkbox"/>					
10	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					

Make additional copies of this page as necessary

Make additional copies of this page as necessary

PART E - DBE COMMITMENTS (All Primes complete this section)

DBEs COMMITMENTS				Description of Work	Dollar Amount Of Bid/Proposal
List only DBEs who have executed Exhibit A forms.					
DBE Contractor Information					
1.	DBE Contractor Name				
	Contact Name				
	Address				
	Federal Tax #	E-mail			
	Phone	Fax			
2.	DBE Contractor Name				
	Contact Name				
	Address				
	Federal Tax #	E-mail			
	Phone	Fax			
3.	DBE Contractor Name				
	Contact Name				
	Address				
	Federal Tax #	E-mail			
	Phone	Fax			
4.	DBE Contractor Name				
	Contact Name				
	Address				
	Federal Tax #	E-mail			
	Phone	Fax			
5.	DBE Contractor Name				
	Contact Name				
	Address				
	Federal Tax #	E-mail			
	Phone	Fax			

Make additional copies of this page as necessary

PART F - NON-DBE QUOTES SUBMITTED (All Primes complete this section)							
NON-DBE COMMITMENTS List all non-DBE firms who provided quotes or bid proposals. Indicate whether the quotes were accepted.							
NON-DBE Contractor Information				Description of Work	Dollar Amount Of Bid/Proposal	Will Firm Be Used?	
1.	DBE Contractor Name						Y or N
	Contact Name						
	Address						
	Federal Tax #		E-mail				
	Phone		Fax				
2.	DBE Contractor Name						Y or N
	Contact Name						
	Address						
	Federal Tax #		E-mail				
	Phone		Fax				
3.	DBE Contractor Name						Y or N
	Contact Name						
	Address						
	Federal Tax #		E-mail				
	Phone		Fax				
4.	DBE Contractor Name						Y or N
	Contact Name						
	Address						
	Federal Tax #		E-mail				
	Phone		Fax				

Minnesota Department of Transportation
 DBE Special Provisions
 Office of Civil Rights

PART G - DBEs QUOTED BUT NOT SELECTED (Complete this part only if DBE goal is not met.)

If DBE quotes were rejected, attach a separate sheet of paper explaining the specific basis for rejecting any DBE quote.

Note: Additional cost is not in itself sufficient reason for rejecting a DBE quote. However, prime contractors need not accept excessive or unreasonable DBE quotes. The contractor's standing within its industry, membership in specific groups (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bid in the contractor's efforts to meet the project goal. (See Instructions attached to this form.)

QUOTED DOLLARS	DBEs WHO QUOTED, BUT WERE NOT SELECTED	TYPE OF WORK QUOTED	REASON NOT SELECTED
1.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
2.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
3.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
4.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
5.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
6.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
7.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
8.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
9.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
10.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
11.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
12.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
13.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
14.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
15.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
16.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
17.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
18.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
19.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
20.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
NUMBER OF DBEs SOLICITED			

PART H – CERTIFICATION / GOOD FAITH EFFORTS AFFIDAVIT (All Primes complete this section.)

STATE OF MINNESOTA
COUNTY OF _____

I, _____, being first duly sworn, state as follows:
(Full Name)

1. I am the _____ of _____
(Title) (Name of Individual, Company, Partnership, or Corporation)

that has been identified as the apparent low bidder of the State Project _____.

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

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

SIGNATURE (Bidder or Authorized Representative)	TITLE	DATE

Subscribed and sworn to before me

This _____ day of _____, 20_____

Notary Public

My commission expires _____, 20_____

Under Sec. 26.107 of "49 CFR Part 26," dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.



Minnesota Department of Transportation
Office of Civil Rights

Contractor Payment Form

State Project Number _____ Prime Contractor: _____ 1st Tier Sub-Contractor _____

Payment Reporting Period: From: _____ To: _____

Instructions: All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the MnDOT office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit on copy of this form to the MnDOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from MnDOT.

Contractor Information		Original Contract Amount	Committed DBE %	Actual DBE % to Date
Name:				
Address:				
Phone:				
Name of Subcontractor/Supplier	DBE? (Check if Yes)	Description of Work	Subcontract Amount	
1.	<input type="checkbox"/>	1.	1.	
2.	<input type="checkbox"/>	2.	2.	
3.	<input type="checkbox"/>	3.	3.	
4.	<input type="checkbox"/>	4.	4.	
5.	<input type="checkbox"/>	5.	5.	
6.	<input type="checkbox"/>	6.	6.	
Amount of Current Payment	Total Sub-Contractor Payment-To-Date	% Paid to Date	Final Payment? Yes/No	
1.	1.	1.	1.	
2.	2.	2.	2.	
3.	3.	3.	3.	
4.	4.	4.	4.	
5.	5.	5.	5.	
6.	6.	6.	6.	
Company Officials Signature & Title		Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)	
Title:		Title:		
Phone:	Fax:	Phone:	Fax:	

Minnesota Department of Transportation
Office of Civil Rights

Contractor Payment Form Instructions

All Contractors making payments to Contractors/Subcontractors/Suppliers/Service Providers, regardless of their tier or DBE status, are required to complete and submit this form to the Mn/DOT Office of Civil Rights (OCR), each time payments are made to sub-contractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the Mn/DOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from Mn/DOT.

State Project Number: As identified by Mn/DOT

Prime Contractor: The contractor who was awarded the project.

1st Tier Sub-Contractor: If a subcontractor has a subcontractor, list the 1st tier sub here and then list all of the 2nd tier Subcontractor(s) in the Name of Subcontractor/Supplier area. *All areas should be filled in regarding the prime as well.*

Payment Reporting Period: This should reflect the current payment period.

Contractor Information: Contractor's information who is making the payments. This must be filled out completely.

Original Contract Amount: Prime contractor's contract dollar amount.

Committed DBE%: The DBE commitment certified in the prime's bid is the minimum percentage of DBE participation on the project.

Actual DBE % to Date: The percent met to date.

Name of Subcontractor/Supplier: Company who is working for the prime contractor on this project.
(If a sub was contracted for more than one contract, list each contract separately.)

DBE?: Check this box if the subcontractor is a certified DBE in Minnesota. You can find a listing of the DBE firms certified in Minnesota at <http://www.dot.state.mn.us/eeocm/ucpdirectory.html>.

Description of Work: The type of work the subcontractor was contracted for.

Subcontract Amount: The dollar amount the subcontractor was contracted for.

Amount of Current Payment: The current dollar amount being paid to the sub.

Total Sub-Contractor Payment-to-Date: Total dollar amount paid to the sub including the current payment.

% Paid to Date: Percentage of total payments made in comparison to the prime's award amount.

Final Payment?: Indicate whether this is the final payment being made to the sub.

Company Officials Signature & Title: Self explanatory

Name & Title of Individual Completing Report: Self explanatory

If you have questions on completing the form, call the Office of Civil Rights at (651) 366-3073.

DBE Total Payment Affidavit

Pursuant to MnDOT Standard Specifications for Construction, Section 1908, the following DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work contracted to be performed by DBEs has been satisfactorily completed. Identify each DBE firm that worked on the project and the dollar amount of the subcontract. If the dollar value of a DBE firm's total work is less than the DBE's original subcontract, please attach an explanation.

State Project Number: _____

STATE OF MINNESOTA
COUNTY OF _____

I, _____, being first duly sworn, state as follows:
(Full Name)

1. I am the authorized representative of _____ (Name of Individual, Company, Partnership or Corporation) and I have the authority to make this affidavit for and on behalf of said Prime Contractor.

2. The following DBE Subcontractors/Suppliers/Service Providers/Sub-Consultants have performed work on the above project with a total dollar value of:

	Name of DBE Firm	Dollar Amount of Subcontract	Total Dollar Amount
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

3. I have fully informed myself regarding the accuracy of the statements made in this Affidavit.

Signed: _____
(Prime Contractor or Authorized Representative)

Subscribed and sworn to before me
This _____ day of _____, 20____

(Notary Public)

My commission expires _____, 20____

Prepare Affidavit in duplicate. Submit one original to the Project Engineer, and one original to:
Mn/DOT's Office of Civil Rights
395 John Ireland Blvd., MS 170
St. Paul, MN 55155

No. 1908 – Standard Specifications for Construction
Unless the Contractor has presented an Affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBE), final payment may be withheld.